WEST VIRGINIA HISTORY

A Quarterly Magazine

CECILE R. GOODALL, *Editor*

BESS HARRISON, *Managing Editor*

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Reconstruction in West Virginia

By Milton Gerofsky

PART II

The Court and Reconstruction

The story of Reconstruction in West Virginia would not be complete without giving consideration to the activities of the court during this period. They went hand in hand with the legislature; whatever one did the other pronounced legal. During all the period between 1863 to 1870, there is not a single instance in which an act or a section of an act, passed by the legislature, was held unconstitutional by the highest court in the state. There were many cases; the power of the court was very frequently invoked. But no former Confederate was ever relieved from the unjust decision rendered against him in the lower state courts.

The statutes imposing disabilities upon the returned Confederates were, as they came under the review of the Supreme Court of Appeals, sustained, and these decisions were many times repeated between 1866 and 1871.[254] Part I (see July issue, pp. 295-360) dealt, in the main, with the right to vote; but the acts affecting property rights of Confederates were, perhaps, more severely felt.[255] According to the terms of an act passed February 28, 1865, no person could bring suit or obtain process in any court without being required to take the test oath, if it was demanded by the defendant.[256] This completely closed the courts against any Southern soldier who sought redress for injuries or for the collection of a valid debt.

During the latter years of the war a great many suits had been preferred against persons who were within Con-

* Part I appears on pages 295-360 of the July, 1945, *West Virginia History.*

254 Herbert, *Solid South*, p. 272.

255 *Ibid.*, p. 270.

256 *Session Acts* (1865), pp. 66-67.

federate lines. Proceedings were had by order of publication and when the defendants failed to appear, attachments were issued and property was seized. As the general law relating to attachments and suits against non-residents then stood, the party against whom these summary proceedings were had, might come into court at any time within five years and file a petition asking that the judgment, order, or decree obtained by default or appearance, be set aside and a hearing had as to the nature in controversy. But to the former Confederate was given no such right. Only the man who could take the test oath was permitted to have his case heard.

Thus the Confederate soldier who returned after Appomattox and found his property in the possession of strangers could not sue. Furthermore, he could not make defense to the action which had been brought against him in his absence and without his knowledge.[257] This was not all. If any property remained to him he became a target for what were known as "war trespass" suits, and judgments were rendered against him as fast as the courts could render them at the demand of persistent suitors.

If, during a Confederate raid in West Virginia, while the war was still in progress, the cattle, horses, or other goods of any loyal citizen were seized for the use of the Confederate army, the person so injured brought a "war trespass" suit against any former Confederate he could find who had any property left. It was not necessary that the defendant should have been one of the company or squad that captured the goods. Furthermore, it was not necessary that he should have been present in any capacity when and where the offense was committed. The highest state court declared that:

> Where it appears that a party was in command of armed forces of the so-called Confederate States, and has his headquarters at a certain place, and property was taken by persons under his command in pursuance of orders from

[257] Herbert, *Solid South*, pp. 270-271.

> headquarters, it is sufficient to connect him with the trespass and make him liable therefor.[258]

The legality of the test oaths in all cases was sustained by the highest tribunal in the state. William Stratton was elected to fill a vacancy in the office of the clerk of the Circuit Court of Logan County. He appeared before Circuit Judge Samuels to qualify for the office, but he could not take the officer's test oath for 1863. Therefore the Judge could not qualify him. Stratton then appealed to the State Supreme Court of Appeals for a writ of mandamus ordering Samuels to qualify him without his taking the oath. The court maintained that:

> Our legislature possessing all the legislative power of the State, it follows that it was competent for it to pass the act in question, unless such power is excluded by the terms of the constitution, requiring the officers of the State to take an oath to support the constitution clear and necessary implication.[259]

With these words the court declared the validity of the officer's test oath, and the writ of mandamus was denied.

On a writ of error the case of Lively v. Ballard was carried to the State Supreme Court of Appeals. In this case the court sustained the constitutionality of the test oath for jurors. According to the court there was no error in requiring the jury called to try the case, to take the oath prescribed in the act of 1863 for jurors, because it was not unconstitutional as claimed by the plaintiff.[260]

In August, 1869, the case of Randolph v. Good reached the highest tribunal in the state. Again the court sustained a legislative act. The act of February 25, 1865, requiring voters to take the test oath, passed before the constitution of 1863 had been amended, was upheld. (See Part I, July issue, pp. 302-303.) The court was of the opinion that:

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[258] West Virginia *Reports*: Hedges v. Price (2 West Virginia 192); Cunningham v. Pitzer (2 West Virginia 264); Echols v. Staunton (3 West Virginia 574).
[259] Ex parte William Stratton (1 West Virginia 304).
[260] Lively v. Ballard (2 West Virginia 496).

> It is its [legislature's] highest duty to defend itself and citizens against the assaults of the enemy. It has the right to use the means necessary and proper to that end. In the judgment of the legislature the act in question was among such means, and it would seem to be extra judicial to sit in judgment upon the wisdom and policy of the act, where the power of the legislature was equal power to exclude the enemies of the State from the polls and to continue them so excluded as long as it might be necessary to the public security.[261]

A full report of the action of the court in relation to the attorney's test oath would be too voluminous for this paper. Several cases will be cited. Andrew Hunter, Samuel Price, W. Samuel Summers, Samuel Miller, and Caleb Boggess applied to the State Supreme Court of Appeals at the July term in 1866 for admission to practice without being required to take the test oath for attorneys. Several of the applicants produced pardons signed by the President of the United States. The questions raised were extensively pro and con.

At the January term, 1867, the application was denied. The court declared that the law was not unconstitutional and that a pardon from the Federal government cannot remove a disability imposed by the laws of West Virginia. The court reasoned that:

> The President of the United States 'shall have power to grant reprieves and pardons for offences against the United States' but this must be constructed to mean for offences against the United States. But if such is not the case, the pardon does not restore to the relation forfeited.

Then the court cited cases to sustain its reasoning. This case occupies forty-six pages.[262]

Shortly before this decision, the Supreme Court of the United States rendered its opinion in the Garland case (4 Wallace 333) in which an act of Congress passed January 24, 1865, prescribing a test oath for attorneys practicing in the Federal courts was held to be ex post facto, and, therefore in violation of the Constitution of the

[261] Randolph v. Good (3 West Virginia 551).
[262] Ex parte Hunter (2 West Virginia 122).

United States and null and void. This decision by the highest court in the nation was brought to the attention of the State Supreme Court of Appeals which had already prepared its opinion denying the petition of the attorneys. One of the judges, however, declared, "After a careful examination of that decision as furnished, I am constrained to adhere to the opinion already advanced."[263]

As late as January, 1870, William A. Quarrier and Nicholas Fitzhugh applied for admission to practice without taking the test oath for attorneys. They produced pardons signed by the President of the United States, but their applications were denied. The Supreme Court of Appeals held that, although the President's pardon might entitle the attorney to practice in the Federal courts, it did not give him the right to practice in the state courts. The court further maintained that the act of February 14, 1866, the attorney's test oath, was not unconstitutional. It was not ex post facto because ex post facto laws relate to penal and criminal proceedings which affect private rights retrospectively.[264]

At the July term, 1868, the Supreme Court of Appeals, in the case of Higginbotham v. Haselden and Rohrbaugh, sustained the validity of the test oath for suitors.[265]

In marked contrast to the action of the West Virginia courts was the conduct of the circuit and district courts of the United States in West Virginia. Many indictments for treason were found by grand juries, but not one ever came to trial. They were held over from term to term, in anticipation of the abatement of prejudice and passion, and eventually all were dismissed. The former Confederates took the oath of amnesty required by the President's proclamation, May 29, 1865, and were no longer molested by the Federal authorities. Attorneys who were not able to practice in state courts found that they could practice in Federal courts.[266]

The decision by the Supreme Court of the United

[263] *Ibid.*
[264] Ex parte Quarrier and Fitzhugh (4 West Virginia 210).
[265] Higginbotham v. Haselden and Rohrbaugh (3 West Virginia 17).
[266] Herbert, *Solid South*, p. 279

States in the "Prize Cases," at the December term, 1862 (2 Black 635), was generally interpreted by members of the bar as conceding to the armies of the Confederate States "belligerent rights." This judicial interpretation was sustained by subsequent decisions of the Supreme Court of the United States. Under the doctrine of belligerent rights, neither of the combatants can afterwards be held liable, either civilly or criminally, for any act done in accordance with the usages of civilized warfare. But the decisions of the United States Supreme Court were nullified in West Virginia. Time and time again, as has already been stated, the plea of belligerent rights was brought to the attention of the courts by former Confederate soldiers, who were involved in trespass, and the State Supreme Court of Appeals would as often overrule the plea.

Several cases will be cited to show the action of the highest court in West Virginia. John Cunningham was sued in the circuit court of Berkeley County by H. B. Pitzer for taking and carrying away two hundred bushels of wheat belonging to Pitzer. It was shown that the wheat was taken by the Confederate army and threshed on Cunningham's machine. Moreover, Cunningham was forced by the soldiers to assist in the threshing of the wheat. Judgment was rendered against Cunningham[267]

On October 28, 1862, Nicholas Martin was arrested in Monroe County by Confederate soldiers and taken as a prisoner to Richmond. In June, 1866, Martin brought illegal arrest and false imprisonment against Allen T. Caperton who had been provost marshal of the Confederate forces in Monroe County at the time of the arrest. Caperton in defense, declared that the arrest would come in the category of belligerent rights. The case was tried in November, 1867, and judgment was rendered against Caperton for $600. This judgment was upheld by the State Supreme Court of Appeals.[268]

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[267] Cunningham v. Pitzer (2 West Virginia 264).
[268] Caperton v. Martin (4 West Virginia 138).

On November 28, 1864, General Rosser's brigade of Confederate soldiers took the town of New Creek, a United States military post, garrisoned by about 1,200 troops under the command of Colonel Latham. Most of the troops were captured although some escaped. Among prisoners taken was John R. Carskadon, a farmer living in the neighborhood, a Union man but not in the service. He was held as a hostage for James Parker, also a non-combatant, who had been arrested by the United States soldiers some time before, and was then confined to prison at Wheeling. In 1865, Carskadon brought suit for trespass and assault and battery against George H. Johnson, who was a private in Rosser's command and one of the squad who made the arrest. In 1870, the Supreme Court of Appeals rendered a decision against Johnson.[269]

The appealed cases were not a tenth of the whole number of these trespass suits which were successfully prosecuted in the state circuit courts. Nearly every former Confederate was financially ruined by them. Even if he had not any property out of which the judgment might be satisfied, the decisions of the court could act as liens on future property.[270]

Naturally one might ask what became of these judgments. Article VII of the constitution adopted in 1872, Section 35, answers the question:

> **No citizen of this state who aided or participated in the late war between the government of the United States and a part of the people thereof shall be liable in any proceedings, civil or criminal; nor shall his property be seized or sold under final process issued upon judgments or decrees heretofore rendered, or otherwise, because of any act done in accordance with the usages of civilized warfare in prosecution of said war by either of the parties thereto. The Legislature shall provide, by general law, for giving full force and effect to this section by due process of law.**

Before leaving this phase of Reconstruction in West Virginia some reference must be made to the part played

[269] Carskadon v. Johnson (4 West Virginia 356).
[270] Herbert, *Solid South*, p. 276.

by Nathaniel Harrison, judge of the seventh judicial circuit, which included the counties of Greenbrier, Nicholas, Monroe, and Pocahontas. It was a large area in the southern part of the state and nearly all the inhabitants were either in active Confederate service or aided the Southern cause in a civil capacity. During a considerable portion of the war the counties mentioned were within the Confederate lines. In these counties the registration law was vigorously applied. Enough men were found or imported who, by the help of an imperfect memory could, or rather did, take the test oath and hold all the offices.

Of this circuit Nathaniel Harrison was appointed judge in 1865; as late as 1862 he had professed loyalty to the Confederate cause.[271] Shortly after his appointment Judge Harrison convened his court at Concord Church and proceeded to discharge all former Confederates who had been elected to office in the fall of 1865. Not only did he enforce the various acts severly, but he enforced the forfeiture act. For this purpose, he imported a Philadelphia lawyer, with whom he formed a partnership, the returns of which were said to have netted them more than twenty thousand dollars annually.[272]

In every county in the circuit, he roared threatenings; he "out-Heroded Herod" in his persecution of the returned Confederates. He was notoriously licentious in his mode of life and, as has already been stated, corruptible in his administration of public office.

In January, 1866, Colonel Hounshell, who had been in the Confederate service, went to the legislature with formal charges against Harrison, accusing him of disloyalty to the United States government, maladministration of the duties of his office, and perjury.[273] The charges were presented in the House of Delegates, February 7, 1866, by Colonel Daniel Johnson, a former officer in the Federal army, who offered a joint resolution for the impeachment of Harrison in the manner provided by law.[274]

[271] Ambler, *Mountain State*, p. 431.
[272] *Ibid.*, p. 431.
[273] Herbert, *Solid South*, p. 281.
[274] House, *Journal* (1866), p. 111.

So angry were the members of the house at Colonel Hounshell, for preferring charges against Harrison, that the former Confederate officer who was in the lobby of the house, was violently assaulted by three or four stalwart individuals and kicked, beaten and thrown out of the building.[275] On the next day the following resolutions were offered and unanimously adopted:

> *Resolved*, That this House deplores the disorderly scene that occurred in the Hall immediately after adjournment last evening, growing out of the introduction of a paper which was deemed by this House a malicious attempt to publicly slander one of the Circuit Judges of the State aggravated by the haughty bearing and insulting language of the author of said slanderous paper towards the members of this House while in the Hall. The sergeant-at-arms is instructed to be vigilant in the preservation of the peace and ejection of all improper persons from this Hall in [the] future.
>
> *Resolved*, That no further action be taken in the subject of the said slanderous paper, but to return it to its author, if he be found through the sergeant-at-arms.[276]

The first attempt at the impeachment of Harrison having failed, he returned to his circuit more vindictive, more bitter, and with revenge more deeply embedded. He was part owner of a weekly newspaper, the Monroe *Republican*, in which he required all legal advertisements from all the counties in his circuit to be published. He advised litigants to employ a particular attorney, whom he favored and from whom he received a share of the fees. He appointed a receiver of the circuit courts of Greenbrier and Monroe counties, and allowed him a commission of two per cent more than was allowed by law. This two per cent was believed to find its way into Harrison's pockets. Harrison borrowed for his own use funds officially held by the receiver and gave no security. In his official capacity he signed the petition of a former Confederate to the President of the United States for a pardon. He received three hundred dollars for his pains. He took

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[275] Herbert, *Solid South*, p. 281.
[276] House *Journal* (1866), p. 115.

jurisdiction of cases in which he, himself, was an interested party. He advised the defendant in an action by a plaintiff whom he hated to bring the case for trial at a particular time, promising to have a special jury summoned for the purpose of finding a verdict for the defendant.

Because he controlled the registrars in his circuit, he was re-elected in 1868, and then he began to punish those who opposed his election. A clause of the constitution provided that, "No person except citizens entitled to vote, shall be elected or appointed to any state, county, or municipal office." Accordingly, Harrison told "Old Scratch" [Dr. J. F. Caldwell] to remove from the list of registered voters the names of Joel McPherson, clerk of the circuit court of Greenbrier County; G. A. Lewis, recorder; Alexander Walker, a supervisor of one of the townships; and Wallace Robinson, sheriff of Greenbrier County. Then he declared these offices vacant and proceeded to make appointments to suit himself. The ousted officials immediately appealed to the State Supreme Court of Appeals and were reinstated. However, for sometime after the court order, Harrison refused to recognize the officers restored by court order.

Alexander Walker, a Republican and a member of the bar of West Virginia, decided to try a new attempt in the impeachment of Harrison. Walker was collecting evidence, when on January 12, 1870, Harrison came into court with a rule already prepared, summoning Walker to show cause why he should not be disbarred for unprofessional conduct in collecting evidence concerning the judge's personal conduct. Walker asked the court that he be allowed twenty-four hours in which to procure an affidavit verifying the evidence. The judge would not grant that privilege. The court directed the clerk to enter at once an order, which had been prepared beforehand, disbarring Walker, and revoking his license as an attorney. Walker carried his case to the State Supreme Court

of Appeals which reversed the decision of the lower court.[277]

By this time the Republican party in the state found Harrison a "white elephant." His outrageous conduct could no longer be hidden by joint resolution. In the legislature of 1870, the storm broke. Articles of impeachment were adopted in both houses, and the judge was summoned to appear for trial, February 25, 1870. Harrison was in Wheeling, where the legislature was in session when the joint resolution was adopted,[278] but he fled from the state in order to escape notice of the forthcoming trial until it would be too late for the legislature to proceed with the trial at that session. He was followed to Pittsburgh; the notice was served upon him there. The next day he returned to Wheeling and handed his resignation to the governor, who promptly accepted.[279]

THE CONSTITUTIONAL CONVENTION OF 1872

After the passage of the Flick Amendment, which enfranchised former Confederates, further amendments to the constitution seemed unnecessary. Nevertheless, the strong conservative faction in the Democratic party called for a Constitutional Convention in order to formulate a new constitution. The remaining traces of Radical Republicanism had been erased from the statute books. Now the conservatives, who comprised the majority wing of the Democratic party, demanded a Constitutional Convention to formulate an organic instrument free from proscription. They wished to remove all existing marks of the Reconstruction period.[280] For these reasons the conservatives in the Democratic party demanded a Constitutional Convention. The Wheeling *Daily Intelligencer* mourned that the conservative Democrats were not willing to wait until the corpse of the Republican party

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277 Herbert, *Solid South*, pp. 282-283.
278 House, *Journal* (1870), p. 195.
279 Herbert, *Solid South*, pp. 283-284.
280 Maud F. Callahan, "Evolution of the Constitution of West Virginia," p. 28.

was decently buried "but must administer on the estate at once."[281] Accordingly, the legislature on February 23, 1871, passed a convention bill.[282] The people could accept or reject the proposal on the fourth Thursday in August, 1871. If the proposal would be accepted, then in October, 1871, delegates would be elected.

Advocates of the Convention raised numerous arguments against the existing state constitution. Some contended that the present constitution was framed and adopted during the progress of the war and was made hastily while Congress was willing to accept it. Not more than one-third of the voters had any voice in its approval.[283] Others were willing to abolish the township system because it unnecessarily multiplied officers, increased the burdens of the people, and in a large majority of the counties operated cumbrously.[284] The Wheeling *Register* wrote that:

> Without a Convention we will have the legislature proposing one amendment after another for the next ten years, and the constitution of the state will be a tissue of patches and inconsistencies that no man can understand. It is better and cheaper to do the work carefully and wisely and for all [time] and then let it rest.[285]

Others fiercely denounced the Supreme Court of Appeals because it had sustained the constitutionality of the proscription laws. At the same time they criticized the conconstitution because it gave to the legislature the power to remove judges.[286] One of the objections was that the constitution could be amended by the legislature without the expense of holding a convention.[287]

On August 24, 1871, the people voted in favor of the Constitutional Convention, 30,220 to 27,658.[288] All the large centers of population except Martinsburg voted in the negative. The majorities for the convention were

[281] Wheeling *Daily Intelligencer*, January 31, 1871.
[282] *Session Acts*, (1871), pp. 124-129.
[283] Wheeling *Register*, May 27, 1871.
[284] *Ibid.*, July 22, 1871.
[285] *Ibid.*, July 24, 1871.
[286] *Ibid.*, July 26, 1871.
[287] *Ibid.*, July 25, 1871.
[288] Atkinson and Gibbens, *Prominent Men*, pp. 116-117.

from the former Confederate strongholds, Jefferson, Hampshire, Hardy, Greenbrier, Logan, Gilmer, and Braxton counties. In October, 1871, seventy-eight delegates were elected, only a dozen of whom — humorously known as the "Twelve Apostles" — were Republicans.[289]

Meeting simultaneously with the legislature at Charleston, January 16, 1872, the Constitutional Convention remained in session eighty-four days.[290] With the legislature, it established a new order of things which was characterized as conservative.[291] Critics spoke of its work as reactionary to which its defenders now reply: "It has stood the test of time and of subsequent Republican control." With amendments, the constitution of 1872, is in effect today.[292]

On January 17, a resolution was introduced by Archibald W. Campbell of Brooke to move the Convention to Wheeling.[293] Nicholas Fitzhugh of Kanawha opposed the resolution in a lengthy and spirited speech. According to the Charleston correspondent of the Wheeling *Daily Intelligencer* the debate which followed was "sprightly and entertaining." The resolution was indefinitely postponed.[294] A few days later the Wheeling city council invited the Convention to meet in that city.[295] The invitation was not accepted. The conservatives felt that nothing in the way of constitutional reform could be accomplished in that "iron hearted city."[296]

On January 20, four days after the Convention had convened, the Wheeling *Daily Intelligencer,* noting its composition, declared bitterly: "In the center of the body sits the hero of a burning Chambersburg, and all around him are delegates, extending from the Southern border to the [Eastern] Panhandle who voted for the ordinance of secession."[297] After observing the action of the conserva-

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289 Callahan, "Evolution of the Constitution of West Virginia," p. 30.
290 Callahan, *West Virginia,* p. 415.
291 Ambler, *Mountain State,* p. 437.
292 *Ibid.,* p. 437.
293 Wheeling *Daily Intelligencer,* January 19, 1872.
294 *Ibid.,* January 19, 1872.
295 *Ibid.,* January 22, 1872.
296 Callahan, *West Virginia,* p. 415.
297 Wheeling *Daily Intelligencer,* January 20, 1872.

tive Democrats, the *Intelligencer* said that even "Union Democrats are to be hewers of wood and drawers of water, mere retainers and henchmen, as it were in the party house hold."[298] In the same vein the Parkersburg *Journal* remarked that no man would stand a ghost of a chance for any position unless his record, as an adherent of the Confederacy, was "like the virtue of Caesar's wife 'not only pure but above suspicion.' "[299]

Nevertheless, the strong efforts made by the most extreme reactionaries to keep West Virginia under the influence of Southern institutions were resisted by the more moderate members.[300] After the early session the efforts of the conservative Democrats were somewhat neutralized by the more liberal Democrats who feared that the reactionary wing would force things into the constitution which would defeat it before the people.[301]

The conservative tendency which prevailed in the early sessions was evident in the resolution of Johnson of Tyler. The resolution stated that the committee on the bill of rights inquire into the propriety of incorporating in the bill of rights the following declaration:

> That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness, and they have, at all times, a right to alter, reform or abolish the government in such a manner as they may think fit.[302]

Some conservative Democrats made themselves appear ridiculous by opposing the first provision of the Constitution of the United States which declared that the Constitution of the United States is the supreme law of the land. On this question, Evermont Ward of Cabell declared that he believed in the "reserved rights of the states"; and Colonel D. D. Johnson of Tyler also declared against this section because "it ignores the heavenborn

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[298] *Ibid.*, January 25, 1872.
[299] Wheeling *Daily Intelligencer*, January 29, 1872.
[300] Callahan, *West Virginia*, p. 415.
[301] Wheeling *Daily Intelligencer*, February 2, 1872.
[302] *Journal of the Constitutional Convention*, 1872, p. 46.

right to revolutionize."[303] George Davenport, a liberal young Democrat of Ohio County, indicated that the liberal Democrats were opposed to the manner in which the former Confederates "were running the convention" by presenting a sarcastic resolution that the names of Grant and Lincoln counties be changed to Davis and Lee.[304]

Earlier in the Convention a remembrance of the late war returned in an episode tinged with bitter comedy. On January 22, Daniel D. T. Farnsworth of Upshur proposed to have the flag of the United States suspended over the hall in which the Convention was sitting. Ward of Cabell, moved to strike out "United States" and insert "the flag of West Virginia." Ward argued that his first allegiance was to the state. Johnson of Tyler proposed to inscribe upon it, "West Virginia freed from tyranny"; J Marshall Hagans of Monongalia moved to amend that by adding "in 1861." Finally James S. Wheat of Ohio County moved to postpone indefinitely the purchase of a flag as the cost would be several hundred dollars.

While the various members were arguing about the cost, Henry Pike of New York, who was visiting the Convention, came to its relief and tendered a flag which was accepted.[305] "It is not known," sneered the Wheeling *Daily Intelligencer,* "whether Mr. Pike's offer was made out of pure generosity to relieve the State of expense, or to see how niggardly West Virginia could be."[306] The Convention passed a resolution to hoist the flag over the hall, five voting against it. On February 19, the flag arrived and "after it was frantically seized by the Twelve Apostles and kissed by some of them, it was hoisted over the Convention Hall."[307] These antics led the Wheeling *Register* to comment that:

> The Constitutional Convention has thus far brought to the surface a good deal of nonsense; but it has done some very sensible things, and there is every reason to expect

[303] *Ibid.*, February 7, 1872.
[304] Wheeling *Daily Intelligencer*, January 25, 1872.
[305] *Ibid.*, January 26, 1872.
[306] *Ibid.*
[307] *Ibid.*

> that the Constitution it will submit will be a vast improvement upon the present one and will receive the warm approval of the people. A great many foolish resolutions, as well as a great many wise ones, have been introduced and referred to committees; but there is in the Convention so much of talent and ability . . . so many grave and earnest men who feel and know the duties and responsibilities of their position, that the people of the State may rest assured that the legitimate work of the body will be done.[308]

Shortly the members would assume a more sober attitude. On February 9, the Convention considered the qualifications of voters. The question of suffrage, and related questions, were the most important issues raised. As in the Democratic state convention of 1870 and during the sessions of the legislature of the same year, the word "white" caused a pronounced cleavage in the Democratic ranks. The committee on the bill of rights and elections reported the suffrage section in the constitution of West Virginia in the exact language since its alteration by the Flick Amendment. This provoked a lengthy and antimated discussion.

Thomas Maslin of Hardy wanted the word "white" to appear in the constitution so that the world would know that he believed in a "white man's government." Under the old system a gentleman could go to the polls and vote his preference boldly and above board, but now they were almost ashamed to go to an election. In his county, continued Maslin, a gentleman went to the polls and slipped in a little piece of paper with some names on it, as if he felt he was doing some mean thing. He wanted to vote so that everybody would know what he was doing. He wanted it to appear what were "our desires as a convention, as to the qualification of a voter, and then if the general government said that some other qualification was sufficient and let in the Negro, the mulatto, the Dutch, the Chinese, the scalawag, the saddle-colored gentleman, the Irish, and the carpetbagger, we must submit."[309]

Accordingly, Maslin offered the following substitute:

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[308] *Ibid.*, February 3, 1872.
[309] *Ibid.*, February 19, 1872.

> Every male citizen of the age of twenty-one years and upwards, and such other persons as at the time of offering the Constitution of the United States authorized to vote, shall exercise the right of suffrage in this State; provided, that no person who has not been a resident of the State for one year and of the county, city, or town in which he shall offer to vote for six months next preceding an election, and who is returned delinquent for his taxes for the year next preceding such election and who failed to produce a receipt for the amount for which he is so returned (and no persons who had been convicted of bribery in any election or of any infamous offense) or who is of unsound mind or paupers shall be allowed to vote at any election in this state.[310]

Alonzo Cushing of Mason coincided fully with the views of Maslin. He prided himself on the fact that he belonged to the white race, and he would never acknowledge the propriety of the laws of Congress or the provisions of the Federal Constitution, which created an equality of men. He might submit to them, but he would never surrender his belief that they were oppressive and unjust.[311]

Samuel Woods of Barbour, a member of the committee, defended its report and hoped that the Convention would pass the section as it was reported on the floor. He took issue with the section in the Maslin resolution which sought to make the payment of taxes a prerequisite to voting. This was a progressive age, Woods contended, and he for one did not wish to go backward. He wanted a man to vote, not on his wealth, his birth, or any other qualification than his manhood.[312]

James M. Jackson of Wood did not attend the Convention to make laws in opposition to the Constitution of the United States. If he did not like its provisions, he was not going to rescind them, as the constitution of West Virginia declared that it was the supreme law of the land. He was opposed to the clause requiring the payment of taxes before a man should have a right to vote. If a man

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[310] *Ibid.*
[311] *Ibid.*
[312] *Ibid.*

was too poor to pay taxes, he did not think that sufficient reason to keep him from the polls.[313] Jackson believed it a little singular that while Maslin was so particular to guard the rights of the white man by insisting that the word "white" be inserted, he should at the same time advocate a proposition which would disfranchise the poor white man who had not been able to pay his tax. It was wrong in principle, concluded Jackson, and so long as he was able, he would never consent by any word or act to such a proposition.[314]

John Bassel of Wood did not think it anti-republican to debar a man from voting until he paid his tax, and quoted Chancellor Kent as being in favor of these restrictions upon voting. The Fifteenth Amendment had thrust a large number of ignorant voters upon the state, and it was bound to submit; Maslin's Amendment was proposed as a partial remedy. If a poor man, concluded Bassel, should be prevented from voting, he must bear it.[315]

James D. Armstrong of Hampshire thought that the Fourteenth and Fifteenth Amendments to the Federal Constitution never were adopted in a constitutional form. He did not believe Congress had any right to propose, or the states to adopt, any amendment stating the qualifications for voting. He proposed to let the world know in the first clause to this section (Maslin's) that he wanted all white men to vote.[316] Armstrong thought the Maslin Amendment would only operate on those who were too lazy and good for nothing to work. No honorable man, be he ever so poor, was unable to pay this small sum.[317]

In sustaining his proposition, Maslin declared that for the last seven or eight years, suffrage had been based on neither color, intelligence, nor property, but in order to vote a man had, with few exceptions, "to be a nigger, a carpetbagger, a scalawag, or a renegade." While he recognized the fact that the Constitution of the United States

[313] *Ibid.*
[314] *Ibid.*
[315] *Ibid.*
[316] *Ibid.*
[317] Wheeling *Register*, February 18, 1872.

had been amended, he wanted the word "white" in the constitution of West Virginia. It had been claimed by many that the Flick Amendment had been illegally adopted, and, if this word was left out, all those lately disfranchised might possibly be again deprived of suffrage. In regard to the payment of the capitation tax, he thought it entirely proper that no man who felt too little interest in the government as to fail to pay it, ought to be permitted to vote.[318]

The discussion became very heated, especially between Benjamin F. Martin of Taylor, and William G. Brown of Preston. The former held up Preston County for disparagement in regard to delinquent taxes. When the discussion had reached its highest point, related the Wheeling *Register,* it was then Saturday noon and someone moved that the Convention adjourn until Monday, which was done. One would suppose that the Sabbath intervening would have a tendency to allay some of the bitterness of feeling occasioned on Saturday. Not so, it had only served to increase the excitement and give others an opportunity "to charge their guns and shoot them off Monday."

As soon as the Convention resolved itself into a committee of the whole, Brown of Preston secured the floor and began to vindicate Maslin's resolution. His remarks were interspersed with many sharp allusions to Martin of Taylor, as the "poor man's friend," "buncombe speeches," "demagoguery," and many other sharp names.[319]

Martin charged Brown with canvassing the state in the fall of 1871 to defeat the call for the Convention, and he construed his support of Maslin's resolution to that effect. Martin also spoke of the first part of Maslin's resolution in regard to the introduction of the word "white," and indulged in a considerable amount of constitutional law concerning the Fifteenth Amendment.[320]

D. D. T. Farnsworth of Upshur, one of the Twelve

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[318] *Ibid.*
[319] *Ibid.*, February 16, 1872.
[320] *Ibid.*

Apostles, opposed the Maslin resolution. He was willing that delinquent taxpayers should vote, and would go further and allow paupers to vote. Furthermore, he was opposed to ostracising any man. This had always been his conviction. When he had voted any other way it was because the times demanded it.[321]

William K. Pendleton of Brooke, chairman of the committee of the whole, declared that they were not progressing. If members desired to deliver "extensive biographies or autobiographies" they would never finish the work before them. He hoped that the members would confine themselves to the point in debate. This request did not have the desired effect, as there were some who had not spoken. Sunday had given them an opportunity to gather ammunition.[322]

David H. Leonard of Wirt, favored the report of the committee in a very brief but pertinent speech, confining himself to the first half of Maslin's resolution. He contended that so soon after the adoption of the Flick Amendment, it would be inconsistent to insert the word "white."[323]

John J. Thompson of Putnam, maintained that the word "white" should be placed in the constitution; first, because he wanted it himself; second, because the people of his county wanted it; third, because the people of the whole state wanted it. He wanted this government to be a "white man's government." Some thought the Negro was equal to the white man, and some even thought the Negro was a little better, but Thompson was of the opinion that "they have shown they were as well qualified to vote as the buffalo on our western plains." "Indeed," said he, "the buffalo has the advantage; the buffalo is true to his instinct. He has only one want, and herds together to accomplish that object . . . but the nigger has found artificial wants to override the rights of white men." Thompson believed that the word "white" should be

[321] *Ibid.*
[322] *Ibid.*
[323] *Ibid.*

placed in the state constitution and, if it did not violate the Fifteenth Amendment, then there would be no need to amend the constitution. "Nigger suffrage is an experiment," concluded Thompson, "and I think . . . we have had enough of the experiment . . . . Let this convention stand up manfully and put the word "white" in the constitution and hope for a better day.[324]

Having tired of the long winded debate, John F. Harding of Randolph reminded Thompson that every speech of half an hour was costing the state fifty dollars. Harding said that he had come to the Convention as a Democrat, but now he hardly knew whether he was a Democrat or a Republican. He hoped that the Convention would confine itself to the question before it, and not talk so much to bother a "poor country boy."[325]

Alexander Monroe of Hampshire, was overwhelmed with surprise to find opposition to putting in the word "white" coming from the part of the house it did. He did not suppose that he would hear Democrats favoring an equality of the races. Negro suffrage was thrust upon the white race; it was not the will of the people. Monroe said that:

> It is said that this is the language of the Flick Amendment for which we voted. Well . . . it may be the language of the Flick Amendment, but we are making our fundamental law, let us make it show to the world that we have a supreme regard for the white man. Let us remember our dignity. The nigger with his curly hair has an equal right to vote with our Governor but he did not want to admit the right to vote to any nigger . . . I want to express my preference in this constitution in favor of making the white man preeminent.[326]

Monroe's remarks aroused Waitman T. Willey of Monongalia as he was in the minority. Willey had expected to be only a silent voter and to assist by his vote in commending what he considered proper for the framing of a good constitution and condemning what he thought

[324] *Ibid.*
[325] Wheeling *Daily Intelligencer*, February 19, 1872.
[326] *Ibid.*

wrong. He believed that the members would be guilty of moral cowardice, if they allowed such words addressed to them without a reply. Monongalia's outstanding Republican delegate asked: "Is the Convention to take back what it has already said in the first section of the Bill of Rights, that the power of the government resides in all citizens of the state, and can only be exercised by their will and appointment?" Willey declared that he would not say that the right of suffrage was a natural right. It was a right conferred, and one which any state may regulate for itself, but in conformity with its other constitutional law.[327]

As to making payment of taxes a prerequisite to voting, the Convention was to bear in mind what was said in the first section of the second article which had just been adopted. The section reads that "the powers of government reside in all the citizens of the state, and can be exercised only in accordance with their will and appointment." The Constitution of the United States, which the Convention declared shall be the supreme law of the land, declares that Negroes are citizens. The logical conclusion is that Negroes are to have the rights of suffrage. The same reasons would apply to the proposition to make suffrage depend upon the prepayment of taxes.

If the protection of a citizen in the enjoyment of property was all that was required then this taxation might do. But citizens have life and liberty to protect, both more sacred than property. Willey concluded that, if the Negro bears arms, and performs all those burdens that other citizens perform, he ought to have the power of appointing those who make, adjudicate, and execute the laws affecting his life, liberty, and property.[328]

Willey was followed by Ward of Cabell, a fine debater, quick at repartee, who delivered his brilliant sarcasms in a humorous and witty style. He asked whether the denial of trial by jury, the test oaths, and the registration acts were evidences of progress. If the Repub-

[327] Wheeling *Register*, February 21, 1872.
[328] Wheeling *Daily Intelligencer*, February 21, 1872.

lican party was a party of progress, other Southern states did not bear testimony to that fact. Ward wanted to put in the word "white." If the Supreme Court of the United States found the Fifteenth Amendment unconstitutional, or the grievance of Negro suffrage became so great that the people should find a way to abolish it, the state constitution would need no alteration.[329]

Alpheus F. Haymond of Marion, vigorously denounced all restrictions. He had supposed from the histories of conventions in Virginia and West Virginia that universal manhood suffrage was an accomplished fact. "What is the retrospect?" questioned Haymond.

> Are not those who go for restrictions on suffrage treading upon sacred ground. The old Constitution of Virginia was restrictive, and held that no man was fit to vote unless he had property; but in 1852 (*sic*), the fight had been over the 'mixed basis,' the 'qualification basis,' and the 'suffrage basis,' and that West Virginia in 1863 reenacted the triumph of 1852 (*sic*) and which the committee [of the whole] now had before it for consideration and which is in the exact language of the Flick Amendment adopted by a Republican legislature to enfranchise the disenfranchised. And now, you ask me to condemn the provision that gave me the right to vote this day and sit in the Convention. You ask me to vote for a provision that restricts voting, not for crime, but because a man is poor and unable to pay his tax when the day of election comes. No, gentlemen, when all restrictions are free from you, and you stand free from political slavery, don't ask to make any restrictions or any prerequisite for voting whatever.[330]

Woods, chairman of the committee on the bill of rights and elections, concluded the long debate. He was sorry to hear that the president of the Convention, for whose abilities he had so much respect, advocate the insertion of the word "white." Woods had hoped that Price, who had been so conspicuous in his liberal views in the Convention of 1850-51, would have been with those moving forward.[331]

After several days of warm discussion upon the sub-

[329] Wheeling *Register*, February 16, 1872.
[330] Wheeling *Daily Intelligencer*, February 19, 1872.
[331] *Ibid.*

ject of placing the word "white" in the proposed constitution as a definition of qualified electors, the report of the committee on the bill of rights and elections was adopted giving all citizens the right of suffrage. An effort was made to attach the payment of a capitation tax as a necessary qualification for voting but it failed. Although the new constitution savored of conservatism, this was a signal victory for the liberal wing in the Convention.

The question of who was to vote had been settled, but the next point of contention was the method of voting. Different views in the Convention, concerning the best method for the expression of the popular vote resulted in heated debate. Again there was a division in the party. Liberal Democrats demanded a secret ballot and the conservative Democrats called for the viva voce method. The result was a unique compromise.

In the majority report, the committee on the bill of rights and elections suggested that in all elections by the people the mode of voting should be by the ballot. The minority report advocated the viva voce method.[332] Jackson of Wood, was in favor of the ballot, and he believed it to be the best system ever tried; he was certain that the citizens of his county were almost unanimous in its favor.[333] Ward of Cabell believed in the viva voce system. He wanted the two plans submitted to the people in a separate proposition at the time that a vote was had upon the constitution which the Convention was framing. The Cabell County delegate maintained that his people were in favor of the viva voce method of voting. He feared that great opposition would be made to the new constitution if the two plans were not submitted.[334]

Whatever may be the preferences of the people as to the mode, Haymond of Marion, pointed out, that as Congress had required that all elections for Congress should be by ballot, it would be easier to conform the state's ac-

[332] *Ibid.*
[333] *Ibid.*
[334] *Ibid.*

tion to that of Congress than to have both plans at the same election, and thus create confusion.[335]

Thompson of Putnam, a staunch state's rights supporter, declared that Congress had no right to prescribe the mode of voting. It was not consistent with state's rights, and he would show to the world that he resisted all such encroachments.[336] Pendleton of Brooke replied to Thompson's argument by pointing out that Congress had the right to prescribe the mode in the states. It was given to them in the Constitution of the United States. The ballot, continued Pendleton, was the surest way to give the most absolute freedom to the voter. He believed that acceptance of the viva voce method would endanger the adoption of the new constitution. The Brooke County delegate pointed out that those who favored viva voce voting had nothing to gain by defeating the new constitution. In case of defeat, the constitution of 1863, which contained a provision for ballot voting would remain in operation. On the other hand, Pendleton said that "to those who favor the ballot it is different should you adopt that viva voce system, as the desire to retain the ballot might cause them to forego what other changes they might like in the new constitution."[337]

Samuel Price of Greenbrier, president of the Convention, joined Ward in declaring that the people of his county favored the viva voce system of voting.[338] All the more liberal Democrats however, fearing that a provision for viva voce voting would defeat the constitution, secured its defeat by a vote of 36 to 29.[339] Twenty-four members insisted that the voter should at least be required to write his name on the back of the ballot. They were able to agree upon a compromise.[340] It provided that the mode of voting should be by ballot, but the voter was left free to make it either open or secret.[341] This peculiar

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335 *Ibid.*
336 *Ibid.*
337 *Ibid.*
338 *Ibid.*
339 Wheeling *Register*, March 21, 1872.
340 *Ibid.*
341 *Ibid*

provision existed in no other state.[342]

Although the question of the Virginia debt arose in the Convention and although Willey advocated the adoption of a clause to indicate that West Virginia would meet its just share of the Virginia debt, the Convention, by a vote of 42 to 26 decided that no clause relating to it would be written into the new constitution.[343] This was regarded by many as repudiation.[344]

On February 25, the report of the committee on the legislative department came before the Convention. The most animated discussion during the consideration of the report was in regard to the eligibility of ministers of the gospel to seats in the state legislature. The committee recommended that:

> No person holding a lucrative office under the state, the United States, or any foreign government, no member of Congress, no person who is a salaried officer of any railroad company, or clerk of any court of record, or who is a minister of the gospel, or priest of any denomination shall be a member of the legislature.[345]

Okey Johnson of Wood, with an amendment already prepared, proposed to strike out the section relating to the exclusion of ministers from the legislature. He maintained that under the fourth section already adopted they could not be excluded, and that the people had a right to say who would govern them.[346] Henry M. Matthews of Greenbrier went further than Johnson. He suggested that the clause forbidding salaried officers of railroads and ministers be removed from the committee report.[347]

Haymond, chairman of the committee, sustained the report. He had no objection to excluding ministers, but there were a few instances under which he could be induced to vote for one. For many years ministers in Vir-

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[342] Fredric Jessup Stimson, *The Law of the Federal and State Constitution of the United States*, p. 217.
[343] Wheeling *Daily Intelligencer*, February 22, 1872.
[344] Callahan, *West Virginia*, p. 418..
[345] *Ibid.*
[346] *Ibid.*
[347] *Ibid.*

ginia had been excluded from the legislature by a clause in the constitution. In many cases where ministers deserted their calling for politics, Haymond concluded, they never returned to their original choice.[348]

Martin of Taylor, declared that he did not want restrictions placed upon the worst paid class, nor did he desire to have the church-going people arrayed against him. He desired it to be remembered that when he returned to his constituents he was opposed to any intolerance or proscriptions.[349]

John B. Hoge of Berkeley, using colorful language, said: "What can you think of the man who gives you holy teachings, staining his sacerdotal robes with the dust of the political arena? Why should he come from the holy sanctuary to sit in the halls of political strife?" He believed the voice of the people and of the clergy would be unanimously against it.[350] The sharp-tongued and witty Ward of Cabell, considered it equal to a union of church and state to permit ministers in the legislature. Whenever a religion, according to Ward, has been connected with the state, it ended in fanaticism.[351]

Another phase of the committee report aroused further debate. It will be recalled that the committee suggested that salaried officers of railroads not be permitted to hold seats in the state legislature. The attitude toward railroads at the Convention at Wheeling, ten years previously, had changed. At the Wheeling Convention Van Winkle of Wood, advocating the dropping of bank officers from the disqualified list, had clinched his argument and won the Convention by saying that it might just as consistently proscribe railroad officers as bank officers.[352]

Since that time the growth of railroad influence had produced anti-railroad sentiment in some sections. Haymond of Marion, declared that railroad companies were

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348 *Ibid.*
349 *Ibid.*
350 *Ibid.*
351 *Ibid.*
352 Callahan, *West Virginia*, p. 417.

seeking great advantages in the legislature. Moreover, they had interests in opposition to the people, and that, if anyone should be ineligible for office, it should be salaried officers of railroad companies.[353] It was sneeringly said that the state should be called the "state of the Baltimore and Ohio." Farnsworth of Upshur, whose policy was to grant no liberal franchises to large corporations, feared that the entire state would be controlled by the Baltimore and Ohio, which carried west immigrants who might otherwise stop in West Virginia. Among those who opposed the disqualification of railroad men was J. Marshall Hagans of Monongalia, who recalled the times not so remote when the people of the Trans-Allegheny region had carried deerskins on their backs to Philadelphia and had drunk sassafras tea six months of the year, because they could not get "store" tea. Hagans declared that without railroads residence in West Virginia would be about as desirable as residence at the North Pole.[354]

After this heated and acrimonious debate had ceased, a vote was taken. The recommendation of the legislative committee was modified and accepted by the Convention as part of the new constitution. The clause which would not permit clergymen to sit in the legislature was erased.

Here it is fitting to discuss, briefly, two subjects which were related to the suffrage issue. Charles J. Faulkner of Berkeley, an outstanding member of the Convention, declared that there would be no difficulty in determining the relations of the state to the Federal government, as far as the Fourteenth and Fifteenth Amendments were concerned. They declare who are citizens, and deprive the state of any power to take away the privileges and immunities of citizens. These words related solely to civil rights, Faulkner pointed out, and it was in the power of the Convention to exclude almost all colored men from voting by prescribing an educational or property qualification. He proposed to show that the colored pop-

[353] Wheeling *Register*, February 28, 1872.
[354] Callahan, *West* Virginia, p. 417.

ulation of the state was insignificant and no practical good could follow their exclusion from the polls. There was nothing in the Fifteenth Amendment that could prevent West Virginia from excluding Negro citizens from holding office. There was no question of the power of the Convention in relation to the matter; it was purely a matter of expediency. Faulkner continued, "Even General Grant at the head of his army could scarcely force the election of a negro in this state." The Berkeley delegate deprecated the introduction of such a provision in the constitution, because it arrayed against its adoption the entire Republican vote of the state, and the sympathies of a large portion of the Union. He thought that there was no practical good to be accomplished and no practical evil to be redressed by the adoption of the discrimination.[355]

The following week Bassel of Wood, introduced a resolution which would allow any white citizen who was entitled to vote to be elected or appointed to any office. Again the insertion of the word "white" aroused debate. The debate which followed filled three columns of the Wheeling *Daily Intelligencer*. To narrate the long arguments of the members would prove tiresome. The general tenor of the numerous debates can be expressed in the words of two members of the Convention. One said: "To keep up the strife is but to array parties against each other, and to disturb that fraternity and brotherhood which constitutes the strength of the state." Another member declared: "It is not wise to place such a clause in our constitution since this race has been enfranchised." The resolution was defeated.[356]

The new constitution reflected the period of partisanship, which preceded it. In the main, it followed the pattern of the Coustitution of 1863.

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[355] Wheeling *Register*, March 19, 1872.
[356] *Ibid.*, March 25, 1872.

THE CONSTITUTION OF 1872

Article I contained little more than meaningless generalities. The suspension of the writ of habeas corpus was denied in the new constitution, as a result of the partisan feeling of the time.[357] The constitution of 1863 forbade the suspension of the writ "except in time of invasion, insurrection or public danger, the public safety may require it." The new constitution provided that "no person shall be transported out of or forced to leave the State, for any offense committed within the same." This grew out of the treatment of former Confederates and their sympathizers during the war.

Political test oaths, requiring persons, as a prerequisite to the enjoyment of their civil and political rights, to purge themselves by their oaths, of past offenses, were forbidden in the constitution. This provision grew out of the bitterness of Reconstruction in the state.

In the new constitution the qualifications for suffrage were changed in two ways: (1) by the omission of the word "white" to make it conform to the Fifteenth Amendment; (2) by increasing the period of residence in the district from thirty to sixty days. That for the state elections remained as it was, one year. The mode of voting was to be by ballot; but the voter was left free to vote by open or secret ballot.[358]

Under the constitution of 1872, the general election of state and county officers and of members of the legislature was to be held on the second Tuesday in October instead of the fourth Thursday in October, as provided in the constitution of 1863. Terms of office except those elected or appointed to fill vacancies, were to begin January 1, unless otherwise provided. The terms of the members of the legislature were to begin on November 1, following their elections instead of January 1, as provided in the constitution of 1863. Both constitutions provided

[357] Article III, Section 4, Constitution of 1872.
[358] Article IV, Section 2, Constitution of 1872.

for the state executive officers to begin their terms on March 4, following their election.

As provided in the new constitution, the legislature was to consist of twenty-four senators and sixty-five delegates instead of eighteen and forty-seven respectively, as directed under the constitution of 1863. Members in each house might be increased from time to time by action of the legislature. The terms of senators were to be four years, and delegates two years instead of two years and one year respectively, as provided in the first constitution. Elections were to be held biennially instead of annually.

The constitutions of 1863 and 1872 were similar in the plans for apportioning senators and delegates among the counties. There were, however, two minor differences. According to the constitution of 1872, when the population of a county was less than three-fifths the ratio of representation, that county might be attached to some other county to form a delegate district. The first constitution provided for dividing a senatorial district into two parts by county lines or otherwise, each party of which was to elect one senator.

Qualifications for membership in the legislature were practically the same in the first and second constitutions with two important exceptions. The constitution of 1872 would not permit salaried officers of railroad companies to sit in the legislature. It declared ineligible any member of the legislature to hold any office which was created, or the emoluments of which were increased, during his term of office, except offices filled by a vote of the people.

The new constitution provided for biennial sessions of the legislature to meet the second Wednesday in January, whereas under the old one, every year the legislature convened on the third Tuesday in January. The first constitution provided that the governor convene the legislature upon the application of a majority of the members; the new constitution made it mandatory that the

governor call the legislature in session on application of three-fifths of the members. The first constitution provided that the legislature cannot continue longer than forty-five days without the concurrence of two-thirds of the members elected to each house. The new constitution made it possible to continue longer than forty-five days with the concurrence of three-fourths of the members of each house.

The constitution of 1872 provided that the governor, attorney general, auditor, treasurer, and state superintendent of free schools, be elected every four years. The secretary of state was to be appointed by the governor, by and with the consent of the senate. All state officers appointed by the governor had to be confirmed by the senate. The constitution of 1863 provided that the governor, secretary of state, treasurer, auditor and attorney general be elected for terms of two years. Under the first constitution the governor was not given the power of veto; the second constitution empowered him with that privilege.

There is a provision in the constitution of 1872 which forbids the legislature from acting upon any measures not stated in the governor's call for extra sessions. This restriction was not in the first constitution. The constitution of 1872 made the governor the commander-in-chief of the military forces of the state, except when they shall be called into the service of the United States. Under the constitution of 1863, the governor had control over Federal military affairs in the state. The governor could succeed himself under the first constitution, but under the new constitution, the governor was ineligible for re-election for the succeeding term.

The new constitution authorized the complete reorganization of the judiciary. The constitution of 1863 provided for a Supreme Court of Appeals, consisting of three judges elected by the people for a term of twelve years. There was no provision made for filling vacancies on this court, except a provision that circuit judges could be called in to sit on cases when it was improper or impossible for the entire court to preside.

The constitution of 1863 provided that the state be divided into nine circuits, in each of which there was to be elected a circuit judge by a vote of the people, for a term of six years. Circuit court was to be held at least four times a year in every county, unless otherwise provided by law. The circuit judges could be required or authorized to hold court alternately in their respective circuits, and a judge of one circuit was permitted to hold court in any other circuit. This constitution also authorized the legislature to create inferior or intermediate courts, if such were deemed necessary. It provided for justices of the peace with jurisdiction over petty crimes and civil cases. where the amount in controversy, exclusive of interest, did not exceed one hundred dollars. The justice of peace had jurisdiction over a township.

The constitution of 1872 created a judiciary made of a Supreme Court of Appeals, circuit courts, county courts, corporation courts, and justices of the peace. The Supreme Court of Appeals was to consist of four judges elected by the people for a term of twelve years. Its jurisdiction was the same as under the first constitution, except in appelate jurisdiction in civil cases, which was limited to cases where the amount in controversy was not less than one hundred dollars, exclusive of costs.

The new constitution contained a limitation on the powers of the Supreme Court not found in the first constitution. Section 4, Article VIII, states: "No decision rendered by the Supreme Court of Appeals shall be considered as binding authority upon any of the inferior courts of this State, except in the particular case decided, unless such decision is concurred in by at least three judges of said court." The power to nullify an act of the legislature was expressly delegated to the state courts by the constitution of 1872. In the constitution of 1863 this was an implied power.

The constitution of 1872 abolished the township and county government, as established under the first constitution. It reestablished the county court, as it was under

the Virginia constitution of 1851, and changed the name of the local subdivision of the county to magisterial district.

The county court under the constitution of 1872 consisted of a president, elected by the voters of the county for a term of four years, and two justices of the peace. The court was required to hold six sessions a year, two of which were limited to police and fiscal affairs of the county. The other four were for the trial of causes, both civil and criminal, and for the transaction of all other within the general jurisdiction of the court.

Among other things, the constitution of 1872 contained a clause limiting the judiciary of the state regarding law suits growing out of the Civil War. The clause reads:

> No citizen of this State who aided or participated in the late war between the Government of the United States and a part of the people thereof, on either side, shall be liable in any proceeding, civil or criminal; nor shall his property be seized or sold under final process, issued upon judgments, or decrees heretofore rendered, or otherwise, because of any act done according to the usages of civilized warfare, in the prosecution of said war, by either of the parties thereof.

The constitution of 1872 limited the powers of the legislature by denying it the power to pass special acts on such matters as regulating the rate of interest, and releasing taxes, changing the law of descent, remitting fines, penalties, or forfeitures, chartering, licensing, or establishing ferries, locating or changing county seats, and the sale of church or property held for charitable uses. The state was also prevented from holding stock in any bank, or in any company or association in the state or elsewhere for any purpose whatever. The only power given the legislature that was not granted in the first constitution was the power to tax privileges and franchises or corporations and persons.

The constitution of 1872 changed the method of amending the constitution. The new constitution provid-

ed that amendments must be proposed by a two-thirds majority of each house and submitted to the people at the next general election for ratification or rejection. A majority of the vote cast was necessary for ratification.

Accompanying the constitution there was submitted to the voter a proposition to restrict the right to hold office to the white race. It was rejected.[359] On August 22, 1872, the new constitution was ratified. The majority for ratification was, however, only 4,567 in a total vote of 80,121.[360] The slight majority did not dampen the opinion of the Wheeling *Register*. The *Register* said that:

> The new constitution is in all respects an admirable one and well suited to the wants of the state. Its adoption marks the beginning of a new era in the progress of prosperity . . . . Never before has so important a victory been won by the Democray of West Virginia. This is the crowning work of all, the greatest and most enduring.[361]

Regardless of the charges of "Bourbonism" in the making of the new constitution of 1872, it was an improvement over the first constitution. The new constitution provided for general laws to take the place of special acts. It gave the legislature power to protect the property of married women from the creditors of their husbands. The legislature was given more power over corporations to protect the small stockholders and to regulate freight and passenger rates of railroads. The new constitution provided much better delinquent land laws and a more efficient school system than the first constitution.

Thus Reconstruction came to a close. The new state, torn by political strife, had gone from one extreme to the other. Reconstruction inaugurated by a Radical Republican party was to be completed by a conservative Democratic party. The era of Reconstruction having ended an era of prosperity began.

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[359] Atkinson and Gibbens, *Prominent Men*, pp. 116-117.
[360] *Ibid.*, pp. 116-117.
[361] Wheeling *Register*, August 29, 1872.

The Minutes of the Greenbrier Baptist Church, 1781-1832

By Emma Frances Alderson

The Greenbrier Baptist Church of Alderson, West Virginia was founded by Elder[1] John Alderson Jr., in 1781, four years after he had settled on the south bank of the Greenbrier River, Greenbrier County (now Monroe). His father, John Alderson, was the son of an Episcopal minister of York, England, and was studying for the ministry himself when he emigrated to New Jersey in 1719. Sometime after his marriage to Mary Jane Curtis he was ordained a Baptist minister and became a fervent missionary of that denomination. He moved first to Germantown, Pennsylvania, and from there to Rockingham County, Virginia, in 1755, where he continued his missionary labors in the wilderness and founded the Linville Baptist church and, perhaps, others.[2]

Elder John Alderson Jr., was born in New Jersey in 1738 and was seventeen years of age when his father moved to Virginia and twenty-one when he married Mary Carroll. Sometime before his emigration to Greenbrier County he made three expeditions across the Allegheny Mountains and down the Greenbrier and Kanawha valleys. On one of these the discovery of the "burning spring" near Charleston caused considerable alarm among the company.[3] One of these expeditions Hale mentions as occurring in 1773; at which time he with John and Peter Van Bibber and Matthiew Arbuckle hid one night under a protruding rock of the Kanawha Falls to escape a band of Indians.[4] Missionary zeal must

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[1] The title of the nonconformist ministers.
[2] James B. Taylor, *Lives of Virginia Ministers*, p. 22.
[3] *Ibid*, p. 150; *The Man* (a Populist newspaper published at Alderson, West Virginia, during the 1890's), May 31, 1895.
[4] John P. Hale, *Trans-Alleghany* Pioneers, p. 63.

have led him across the mountains on the last two of the expeditions as he baptized a few people each time.[5]

After he reached middle life, the experience of a severe illness and the loss of a beloved daughter influenced him to accept his father's admonition and accept the "Prince of Peace." During the absence of his father, he had done the farm work and had received little education; he had read the Bible chiefly and had memorized the Baptist Catechism. He at first thought that so weak a creature as he could not be called to preach, but at last Divine tokens convinced him that it was the will of God. It certainly made the father happy to baptize his son, to ordain him as a minister, and to see him become the pastor of the Linville Baptist Church. However, he remained there about two years before moving to Greenbrier in 1777, whence he believed it was his duty to extend Christianity among the people of the wilderness.[6]

His journey across the mountains was delayed three or four months[7] at Jackson's River (Clifton Forge), Virginia, because of an Indian raid in Greenbrier County. He stopped first at Jarret's Fort on Wolf Creek (near the present site of the Federal Industrial Institution) and later built his cabin on the south bank of the Greenbrier River (on the present site of the Alderson House). His home, which was occupied by a grandson, George Alderson Sr., was burned during the Civil War. The patent called for 1180 acres of land on the south bank of the Greenbrier River.[8] The town of Alderson (Monroe County) is built on part of this land, but over two hundred acres of the grant remain in the possession of a member of the family and has never had a deed made to it.

As a farmer Elder Alderson often carried a gun in one hand while following the plow. As a missionary he often carried a gun in one hand and the Bible in the other while traveling to preach at such places that were conven-

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[5] Robert W. Semple, *History of the Rise and Progress of the Baptists in Virginia*, p. 425.
[6] Taylor, *Virginia Ministers*, pp. 151-52.
[7] J. W. Morgan, etc., *A Souvenir of the 125th Anniversary of the Greenbrier Church*, p. 11.
[8] *Ibid.*, p. 273.

ient for the people to assemble. He was not always welcome at the forts, even though he was the only preacher in this part of the wilderness.

The Indian was not the only danger of the Baptist ministers in Western Virginia; the nonconformists often suffered arrest and imprisonment for disturbing the peace. "Family tradition relates that Elder John Alderson Sr., and his son, Elder John Alderson Jr., were imprisoned along with Craig, Moffet, Wallers and other missionaries for preaching and marrying contrary to the laws of the Established Church of England."[9] However, there is no record that Elder Alderson was molested in his work after he reached Greenbrier.

After four years of struggle he was able to get twelve people together to organize on November 24, 1781, the Greenbrier Baptist Church,[10] the first church of southwestern Virginia, and the third Baptist Church of present West Virginia. The following year it became a member of the Ketokton Association (Philadelphia, Pennsylvania). The members of the church included the pastor; his wife, Mary Carroll Alderson; his brother, Thomas, who had fought with General Greene at Yorktown; John Kippers, John Shepherd, John Skaggs, Lucy Skaggs, Catherine Skaggs, Joseph Skaggs, Bailey Wood, Ann Wood, and James Wood.[11] Due to a revival, which continued from 1785 to 1791, and influenced the surrounding country, twenty-four people were baptized and added to the church membership,[12] but not until July 1784 was the first place of worship near enough completion to be used. The church has been rebuilt three times on the same site and the descendants of the founder continue as leaders.

The pastor continued his missionary labors and within a few years established eight more churches as follows: Indian Creek (1792) with twenty-three members; Big Levels (1796) with fourteen; Kenhawa the same year

[9] Emma C. Alderson, The Prodigal, Private Papers (MS).
[10] Taylor, *Virginia Ministers*, p. 153.
[11] Rev. Robert B. McDaniel, "One Hundred and Thirtieth Anniversary of the Old Greenbrier Church," p. 1.
[12] Taylor, *Virginia Ministers*, p. 153.

with twelve; Peter's Creek (1803) with thirty-two; Blue Stone (1804) with twelve; Taze's Valley (1805) with twenty-seven; Mud River (1807) with twenty; and Cole River the same year with forty-five.[13] When the Indian Creek Church was about to dissolve in 1797,[14] it was revived by his serving as pastor for eleven years; and even though the church was eighteen miles from his home, he kept all appointments with great punctuality. Under his leadership the Greenbrier Association was formed in 1801.[15]

He continued to be active in church and association affairs until his death on March 5, 1821.[16] He lies buried beside his wife behind the Greenbrier Church which he founded and served as pastor about forty years. (Rev. James Ellison became the second pastor in 1820.)

No son of Elder John Alderson Jr., became a minister, but his son, Joseph, gave generously of his means and energy to support the Greenbrier Church and the Greenbrier Association. His zeal for the Baptist cause was so great that he gave the land on which the Baptist Church of Lewisburg now stands.[17] When the Greenbrier Church was without a pastor he served as moderator (chairman) from September 1832 to January 1835.[18] He frequently conducted religious services and was moderator of the Greenbrier Association for about forty years. He last appeared in public as moderator of the General Baptist Association of Virginia at Lynchburg in 1845, where he became ill and returned home to die in July.[19]

However, two grandsons of Elder Alderson followed in his footsteps, became ministers, and served as pastors of the Greenbrier Church and missionaries of the Greenbrier Association. The first of these was James O. Alderson who served the church, which consisted of only forty members, for two years.[20] He returned home from

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13 Semple, *Baptists in Virginia*, p. 325.
14 Taylor, *Virginia Ministers*, p. 153.
15 Morgan, *125th Anniversary*, p. 12.
16 Taylor, *Virginia Ministers*, p. 155.
17 Marcellus Zimmerman, Memoirs of Monroe County (MS), p. 122.
18 Greenbrier Church, Minutes.
19 Emma Alderson, Family History (MS).
20 George Alderson Jr., *The Greenbrier Baptist*, December 1904, p. 1.

a missionary journey exhausted from preaching and died two weeks later of "consumption" at the age of thirty-two in 1832.[21]

The second of the grandsons to follow his grandfather was the Rev. Lewis Allen Alderson who was educated at Ohio University, Athens, Ohio, and at William and Mary College, Williamsburg, Virginia. He served two pastorates, one beginning in 1834 and the other in 1845. During that time about one hundred people were added to the church membership. After selling the property in North Alderson which he had inherited from his father, Joseph Alderson, he moved to Kansas. Continuing in the missionary tradition, he founded the first Baptist Church of Atchinson in 1858; and one year later with the help of another minister, Ottowa University, a Baptist educational institution, where Indians and whites attended together.[22]

It is not generally known that the records of the business meetings of the Greenbrier Church are in existence from the date of its organization in 1781. There are some omissions which may be explained by bad weather, floods, or absence of the preacher on missionary journeys. It is an experience to turn the yellow pages of the old records which are written in the quaint diction of more than a century and a half ago. There are chronicles that touch the heart, that stir the noble sentiment of man's nature, and that appeal to the sense of humor. They tell a tale briefly and in such simple and direct language.

Ministers may be interested to know that one congregation realized slowly and painfully that a church member should contribute to the support of the pastor. In the records appear these items:

> **Feb. 22, 1793 The Church has taken into contemplation the contributing towards the support of our minister especially cloathing.**
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> **April 26, 1793 A motion was made for assissting Br Alderson in providing him with wearing apparel Br Skaggs and**

[21] Taylor, *Virginia Ministers*, p. 140.
[22] J. Alderson, *125th Anniversary*, p. 18-19.

Br Ryland was to advance ten shillings apiece for that purpose

May 29, 1794 According to motion made last meeting in assissting Br Alderson yearly John Viney two Dollars Sister Davis one dollar Thomas Scaggs one Dollar to be paid against our stated meeting in December

Dec. 30, 1797 Agreeable to our last refference respecting Delinquent members in time of Publick Collection ordered that they pay their Quotta as well as we that attend giving it to the Deacon as soon as Oppertunity permitted Br Alderson is to give the Delinquent word of church proceedings.

Dec. 28, 1799 . . . Br Walker having settled with Br. Alderson in Behalf of the church there remains in his hands a Ballance of *196*.[23]

April 25th 1802 . . . the church looks upon it as a duty to contribute yearly according to their ability something for the support of our minister

Oct. 30, 1802 The church being in debt to Br Alderson One Dollar for Assn Expenses, there being a quart of wine left at the communion that supplied the Brethren on Indian Creek the money for that Br Alderson is tollerated to receive for his own use. The money that was to be collected for Br Alderson not being fully received the members are desired to be in readiness to pay their quotta likewise to adopt a plan for the support of our minister in a future day.

Feb. 26, 1803 . . . this day the church has appointed next November as a stated time to pay something according to our own abilities or whatsoever the Brethren find free to give toward the support of our minister

March 21, 1807 A matter of Difference between our Elder Br and William Johnston respecting the quotta that each member was to pay Br. Alderson according to their several abilities Br Johnston being behind in the matter Br Alderson put him in remembrance of his engagement Br. Johnston thinking it rather a Demand (it being a few days before the time of meeting) throws down or gives Br Minister nine pence for three years pay this was brought before the church as an accusation of the Br Some of the church agreed to be debated others split in their oppinions one crying here and anothere _____ _____[24] these for having trial then and others for putting off Our Br Alderson insisted upon the trial, then for he was going on a Journey if it was not tried it would be taking advantage in his absence and that he

[23] Shillings or dollars not indicated.
[24] Illegible

was agreived with Br Johnstons conduct toward him, which did belong to the church first, At lenght they agreed to take up the complaint, Br Johnston related his Story first without interruption Br Alderson related his, but was opposed in the last part of his speech, which throwed the whole into confusion and Disorder, and so broke up the meeting

April 25, 1807 Josiah Osborn Moderator . . . it was thought most advisable for them both to make a confession in order to satisfy the church

Dec 26, 1807 Br Alderson having returned the next thing was to enquire into the dispute that was left unsettled between brother Alderson and Brother Johnston Both being present Br Alderson made his confession to the church acknowledging the badness of his temper—being sorry that such matters should happen, having offered to supply his place in the ministry if his church would return to their duty and contribute to his support.

Oct. 8, 1814 committee reported that church members not expedient in this remote part of the country to money as a contribution to support the gospel—but that each member can pay in produce of the country—say corn rye, wheat oats etc Janes, socks, gloves, waistcoat etc contribute as largely as possible until the Treasury be established

May 25, 1822 Bro Ellison offers to resine his care of the church and the church inquires to know the cause and he states two reasons viz their inattention to church meetings and neglect in contributing to the wants of him as their pastor

May 26, 1832 At a meeting of the Greenbrier Church it is ordered that steps be taken to collect the Amt due James O. Alderson for his service which is four months and pay same to his widow

Some negro slaves belonged to the Greenbrier Church where they sat in the balcony.[25] The attitude regarding negroes and slavery was expressed by the following resolutions:

June 24, 1786 The Association having requested an Answer or Advice respecting Slavery from the churches they personate we Believe it to be an evil in keeping them in Bondage for life, Our church having but few in their possession we hope our Brethren will not think hard if we lie neuter in this matter

[25] *Greenbrier Baptist*, July, 1901.

Sept. 27, 1801 It is thought expedient that if any of the negro brethren or Sisters should join the church by letter of experience they must expect to be treated as servants

June 27, 1806 Our Black Brother Wopping by Request with the consent of the church has made application that he might praise God in way after meeting, the church granted his request & chose Br Alderson and Br Kippers to talk with him on the subject

"The place of women" gave much concern:

July 29, 1804 . . . Querry What Does the Apostle mean by this passage in Corinthians when he says, suffer not a woman to Speak in Church Answer We do not think the apostle prohibits woman from speaking in Church Meetings in time of Christ neither in exercising in prayer publickly if they should find a freedom no more than the male members

April 26, 1805 . . . motion made for female members be a quotta of four pence half penny each, to which they agreed

It is little wonder when the church had such a small membership that the "Delinquent member" was only the absent one, and that he was often mentioned in the minutes:

April 28, 1786 The church having taken into consideration the reason of members not filling their seats in the time of church meeting it is thought necessary that every member so absenting give in their reason at the next church meeting in course.

June 24, 1786 According to our last consideration respecting Delinquent Members it is thought every member absenting themselves three times without lawful Excuse is worthy of censure

Feb. 26, 1788 The church has unanimously concluded for the clerk to Draw a list of the members names dividing them into three divisions the first Division those that are nigh to attend once a month the second division those within 15 miles once a quarter and those at a further distance once a year, members not attending according to their division the clerk is to take account of their absence and to make an enquiry the next meeting in order for satisfying the church

August 27, 1802 The Brethren made their report respecting Br Parker's Delinquency the reason of his not coming to meeting is this he has got Entangled in Debt and the Sheriff

has a process against his Body is not willing to be taken, and he is keeping out of the way untill he can make out some way to discharge his lawful Debts when that is accomplished he talks of tending meetings more strictly the church taking into consideration has granted his request

August 26, 1809 The church taking into consideration the delinquency of the members has adopted the following plan (viz) every meeting until our annual assn the clerk shall write the members names in the minute book them that are present those that are absent shall not be priviliged to a seat until they relate the cause of the absence.

The zealots held members to account not only for absence at church meetings but also for conduct at home and other places. Instances follow:

May 22, 1784 Querry prepared to the church whether it was consistant with a Christian Character to encourage frollicking in their houses or not Answered unanimously not Right The church has suspended Br John Viney from communion for the above crime until he give satisfaction to the church By repentence

Feb 26, 1788 . . . Those members who were under censure were called for (viz) Br Frogg Br Ellison Ruth Ellison and Br Alderson to appear against our next church meeting to give satisfaction for their transgressions Br Wood to cite Br Thomas Alderson Br Hyland to cite Br Frogg and Br Shanks to cite Br James Ellison and Sister Ruth Ellison against that time

Sept. 27, 1788 . . . The church has excommunicated Thomas Alderson for several causes, unruly passions threatening the church and neglecting to hear the church The church has excommunicated James Ellison for putting away his wife indecient behaviour with his Daughter and sending threatening letters to the church clearing of himself and accusing the church and charging her with false accusations.

March 28, 1791 . . . The church has excommunicated William Shanks for Heretical principals withdrawing from and neglecting to hear the Church Sentence to be read tomorrow being Sunday

Aug. 27, 1794 A complaint was brought before the church Br John Alderson against Sister Susanna Taylor for publickly rebuking him not having taken gospel steps the sister Acknowledged she was in the fault and so a reconsiliation was made between them and the members of the church.

Nov. 23, 1799 . . . Br Walker and Br ------[26] are nominated to cite Br John Wood to appear next church meeting to answer for his transgressions in frolacking and neglecting to hear the church.

Dec. 28, 1799 . . . Br John Wood not appearing as he was notified today the church thinks him ripe for Excommunication Sentence to read tomorrow being Sunday

June 25, 1803 A motion was made by Br Spence Ball respecting a horse he purchased of a certain Mr. Graham legally and received a receipt for the payment netherthless a report has circulated that he had not purchased the horse lawfully Br Ball apprehending it might wound the Brethren made a report to the church of the bargain he had made with the above Graham Br John Kippers and Br Wilson Lewis having made into the merit of the matter and from their report the church thinks Br Ball Justifyable in what he has done

Jan. 25, 1806 Br Christian Smith came before the church and gave a relation of a matter that he had acted that was in communing with the Methodist Brethren it being contrary to the Discipline of this church But the Brother not being acquainted with the rules of the church we therefore thought him Excused and so looked upon his confession as Sufficient to Satisfy the church.

The first Greenbrier church was built and maintained with great difficulty, as indicated by the fact that the "meeting house" was mentioned frequently in the proceedings. For instance:

May 24, 1783 Having taken into consideration respecting a place of worship it was thought a place more convenient on McWilliam Davis nigh Baughmans Ford Greenbrier River, an acre of which being granted by --------[27] Morris for the building a meeting house and timber *Bends Drawn*[28] for the adjoining the meeting house, for the use of the Baptist Society and for a publick place of Interement to Bury the Dead.

July 25, 1783 The Church having formed a plan for the building of the meeting house (viz) 25 by 17 a chimney in the middle in the breadth of the house to begin building in August next.

Feb. 26th 1793 The meeting house being out repair and go-

[26] Illegible word.
[27] Illegible word.
[28] Not sure of underlined word.

ing fast to decay it was concluded upon to draw a superscription in order for the members & non members to give a sum voluntarily, to cover it with shingles and build a stone chimney. Br Walker appointed to draw the superscription to get subscribers & collect

Nov. 25, 1794 Ordered that John Walker collect the Ballance of the Superscription in Order to pay for the Chimney that is finished for the meeting house

March 27, 1802 After the meeting being opened in the usual form proceed to business The church present as the meeting house wants finished in laying the floors and finishing the gallary Mr. Bentley one of the neighbors made a motion to the church if they would employ him he would undertake the Business according to his own plan then the church therefore *bent*[29] to hear his proposal against next meeting in course

April 25th 1802 The church has authorized George Bentley and Thomas Alderson as co-workers to finish the meeting house. A superscription being raised for that purpose . . .

June 25, 1803 . . . A further motion made for repairing the house as the former trial of Mr. Bentleys fell to the ground the Deacon is appointed to provide a workman and report against our next meeting

July 30—1803 According to our last refference in the providing a workman for the laying of the floors likewise a pair of slaves the workman was _____[30] but not being present the church has nominated Joseph Skaggs John Lewis John Scaggs _____[31] Scaggs, Frogg to superintend the business and to report as necessity requires. John Scaggs is to furnish the nails for the Workmen Br. Frogg is to send 100 for his part A superscription is to be provided against our next meeting for to pay the workmen.

Feb 26, 1804 A motion made for the title of the premises on which our meeting house is built it is therefore postponed until our next meeting that things may be put in order for the obtaining title. . . . The church has chose Br John Alderson and Br John Kippers to make application to Wm Morris Senior owner of the land whereon the meeting house is situated to obtain a deed for an Acre of land which was granted by bond[32] on Wm Morris Junior now Deceased but the title never obtained.

A miscellaneous selection of these minutes tell stories

[29] Not sure of word.
[30] Illegible word.
[31] Illegible word.
[32] Word difficult to read. Not sure *bond* is the word.

that are full of human interest, unconscious humor, and the continual struggle on the part of these brave and modest heroes in the mountains in their efforts to keep the fires of religion burning.

Oct 25, 1783 The meeting being opened with singing and prayer consultation was held whether it would be best to make the collection for church expenses tomorrow it Being our communion or next church meeting in course, Agred that it Be our Stated meeting the last Saturday in next month.

Nov. 29, 1783 Meet at Br Josiah Osborns according to appointment after inviting the Divine aid proceed to business which was to collect church Expenses ammounting to one dollar being levyed on nine members, male and female, Br John Alderson and his wife being exempted, which ammounted to eight pence apiece

March 27, 1784 The money due for church expenses being collected and settled

Oct 29, 1784 . . . Ordered that communion be held the last Sunday in May and the last Sunday in Nov.

July 27, 1786 Respecting our reference last meeting of receiving members as evidence we think as we profess to be separate from the world and receive none but what, we in the Judgment of Charity is taken out of the World we therefore are still Bound By the Command of our great Lord and law-giver to keep ourselves Separate from the World not that as we condemn any Individual in the World

March 28, 1791 . . . The Arm of this church that lives on New River and adjacent neighborhood has petitioned for a constitution believing themselves to be strong enough to be Selected into a body to carry on business themselves the church has granted their request and has petitioned the asso for help to constitute and ordain Mark Lacey for their minister

Nov. 26, 1791 The Church has tolerated Br. John Alderson and Br. Mark Lacey to appoint Meetings for this ensuing year wherever they think it most Convenient for God's Glory and the good of the people in general

May 25, 1793 Rebecca Lewis received by law and gospel experience into the Church & was baptized

Feb. 27 1796 It is agreed that next church meeting be appointed friday for fasting & prayer or a Day of humiliation Begging our heavenly father to remove the Deadness and

hardness of heart that seems to prevail among us and that a revival of religion may take place in these our frozen hearts.

March 27, 1796 According to our last appointment this meet & implored the great Rule of the Universe to remove if it was consistent with his will the great Deadness that appears amongst us By confessing our sins and begging forgiveness for Christs Sake.

Feb 28, 1800 Ordered that a note be given to Br John Walker in order to Introduce him to Kenawa church Expecting to keep School this year upon New River

Feb. 25, 1801 It is further ordered that negro Hany receive the same as he did last year for his keeping the meeting house clean and making fires. . . . Sister Washburn being aged unable to help herself being in want the church has taken her case into consideration and so has contributed something toward her relief.

July 25, 1802 The Brethren has collected 2[sh] 6[33] for the purchasing of a Ledger for keeping records of this church

Jan 29, 1803 After imploring Divine Aid proceed to business A Querry that was debated at our last Assn (viz) whether Money was an atribute of the Deity or an Act proceeding from an attribute the church not being fully satisfied with the voice of the Assn it was brought before the church for a hearing But the church not being all present it was laid over for further investigation against our next meeting as it was not rightly understood by all members, and that they might search the Scriptures for better information

Feb 26 1803 According to our last refference of money being an Atribute after a considerable Discourse the church according to their oppinion gave it up that it was attribute as well as an act of the Deity

March 27, 1806 A motion made by the Church whether the kissing of the Book before a magistrate was agreeable to Scriptures or not The Church thinks not but rather the mode of affirming is *not*[34] Scriptural and hopes the legislature will take it into consideration and grant us liberty of conscience in this matter

Jan 22, 1820 At a meeting of the Church of Greenbrier after meeting being opened On motion of Elder John Alderson the members present unanimously called in Rev'd James Ellison to supply them in preaching and administering the ordinances of the church who being present agreed

[33] Probably 2 shillings 6 pence.
[34] Not sure of word.

there to so long as it might suit himself and the church to do so with the liberty of administering the ordinance of Baptism in the bounds of the church it being understood that --------[35] Elder John Alderson is to retain his former place in the church[36]

[35] Illegible word.
[36] Greenbrier Church, Minutes, November 24, 1781-June 13, 1835.

West Virginians in the American Revolution

Assembled and Edited by ROSS B. JOHNSTON

The sources of this material are from the files of the Pension Office at Washington, from various county records, from notes of patriotic societies, principally the Daughters of the American Revolution, Sons of the American Revolution, Sons of the Revolution, and from a large miscellaneous group of published and private sources. Corrections and additions to this list will receive the careful attention of the editor.

SHAW, CHARLES

Service—Virginia Va. No. 6175 No. S. 7484

Enlisted in Fauquier County, Virginia, in the spring of 1781 and served six months as a private under Captain Helms in the Virginia Line, Continental Establishment, in Colonel Edmonds Regiment, under Generals Washington and Lafayette. Took part in the siege and capture of Yorktown. Received pension in Harrison County, Virginia, in 1833, which was later dropped, but reinstated. Supporting data submitted by Hamilton Gass and Jacob Copen.

SHEETS, JOHN

Born in Lancaster County, Pennsylvania, 1750-53. Enlisted at Chamberstown (now Chambersburg, Pennsylvania) and served six months as a private under Lieutenant James Young and Captain Snyder of the Pennsylvania Line. Took part in the battle of Trenton. Removed to Patterson Creek, Hampshire County, Virginia, in 1803, then to Wood County, in 1811, where he was living when he received pension in 1833. This was suspended in 1835. Sheets was a German unable to speak or understand English well, and this case received extended consideration. In 1841, he was very infirm, his wife was blind, and both were dependent upon relatives. Pension was resumed in 1842-43. Supporting data was filed by John Sheets, son, Henry Sheets, nephew, Barnes Beckwith, Jonathan Prentiss, Thomas Maddox, and the Rev. Benjamin Mitchell.

SHEETZ, ADAM

Enlisted in Captain Stephenson's company and then in Captain Shepherd's company. He was captured but was soon exchanged. He was drafted out of Shepherd's company January 1, 1777, to another rifle company. In December, 1778, he joined the fourth company of Morgan's Riflemen under Captain Charles Porterfield. He came from York, Pennsylvania, to Shepherdstown about 1762. After the Revolution, he had a widely known gunshop at Shepherdstown.

SHELL, NICHOLAS (Surgeon)

Served as a surgeon during the Revolution for six years. After the Revolution he returned to Shepherdstown where he died in 1803. He had a son named John N. Shell.

SHEPHERD (SHEPARD) ABRAHAM (Captain)

Lieutenant of Stephenson's Virginia Rifle Company, July, 1775; Captain of Stephenson's Maryland and Virginia Rifle Regiment, July 9, 1776; taken prisoner at Fort Washington, November 16, 1776; exchanged August 26, 1778; appointed captain of the Eleventh Virginia to rank from July, 1776, but was retired September, 1778, being absent owing to illness. He was afterwards discharged and died in 1822.

He was born at Shepherdstown, November 10, 1754, being the youngest son of Captain Thomas Shepherd, the founder of Shepherdstown, and his wife, Elizabeth Van Meter. His wife was Eleanor Strode.

SHEPHERD, DAVID (Colonel)

Born in Berkeley County, Virginia, near Shepherdstown, where his father, Thomas, was one of the earliest settlers of the Shenandoah Valley, allied with the Hites and the Van Meters. In 1770, he removed to the West and settled at the forks of Wheeling Creek in what is now Ohio County, West Virginia. He acted as commissary for a time, and in January, 1777, was chosen county-lieutenant for the newly created Ohio County, and acted in that capacity until his death. He led a regiment in Brodhead's Cochocton expedition in 1781. During 1783 and 1785, Shepherd served in the Virginia legislature, and during the Indian wars was active in the protection of the border settlements.

SHEPHERD, JOHN

Born about 1749 and died at Red Oak, Ohio, in 1812. He was married in 1773 to Martha Nelson. He served under Captain William Cherry in the Fourth Virginia Regiment, from April, 1777, to March, 1778.

SHEPHERD, WILLIAM

Enlisted under Captain Stephenson in 1775. He was born in 1737 and married Mary Clarke. He later moved to Ohio County where he died in 1824.

SHEPPARD, JONATHAN

Service—Maryland Va. No. 18487 No. S. 38365

Born at New Mecklenburg, now Shepherdstown, Jefferson County, West Virginia, 1759-1760. Enlisted July 1, 1775 while living at Old Town, Maryland, and again in 1776 for three years, and served under Captains Michael Cresap, Beale, and Davis, in Colonel Moses Rawlings' Regiment. Was in the battle at Fort Washington, was taken prisoner there and carried to England. After his release, he came to Pennsylvania, then to Harrison County, Virginia, and then to Reedy, where he

died April 16-17, 1825, and is buried on the home farm. Pension was issued to him while in Lewis County, Virginia, in 1822. His service was certified by John Reed, Thomas Beale, and Nathan B. Magruder.

SHEPHERD, WILLIAM

He was the oldest son of Colonel David Shepherd, and served in the Revolutionary War. He married Rebecca McConnell by whom he left one child. In January, 1790, Rebecca Shepherd petitioned the state of Virginia for pension in recognition of her husband's military services.

SHERMAN, JOHN

Service—New York Va. No. 25216 No. S. 7503

Born, 1756, and at the outbreak of the Revolution lived in Dutchess County, New York. There he enlisted, June 20, 1776, and continued in service until November 1, 1780, as a private under Captain John Darlin in New York troops under Adjutant Hamilton, Colonel Humphrey, and General James Clinton.

Soldier was living in Brooke County, Virginia, in 1833 when he received pension for his services. Supporting data was filed by the Rev. John Hale, Jacob Wiswerger, and Dr. James M. Dawson.

SHINGLETON, WILLIAM

Service—Virginia Va. No. 14729 No. S. 38371

Born about 1754 and was living in Culpepper County, Virginia, during the Revolution. He enlisted in the spring of 1778 and served until 1780, was a private under Captain Roberts in the Virginia regiment commanded by Colonel Taylor. Served as guard at Albemarle and Winchester for prisoners from Burgoyne's army. Was honorably discharged at Harpers Ferry, Virginia. Received pension in Harrison County, Virginia, in 1819. Supportng data submitted by Jonathan Humphrey.

SHINN, ISAAC

Service—Virginia Va. No. 23319 No. S. 7505

Born, Burlington County, New Jersey, October 9, 1760; in 1773, removed from New Jersey to Stafford County, Virginia, thence to Hampshire County and West Augusta, now Harrison County, Virginia. Married Agnes Drake in Harrison County, February 16, 1785. She died April 16, 1853. Their children were: George of Illinois; Isaac of Missouri; Rachel Wilkinson of Virginia; Mary Smith of Virginia; Debora Davidson of Ohio; Rebecca Carl of Ohio; Tibiatha, wife of Hiram Shinn of Illinois; Samuel, dead; Benjamin, dead; Hannah Shinn, wife of Edward Shinn of Ohio; Agnes Bartley of Missouri; Susanna Bartley of Missouri.

Shinn enlisted in 1778 and served six months under Captain William Robertson or Robinson at Jones Fort; in 1778, six months under Captain Andrew Davis or Davidson at Jones Fort as scout and spy; in 1780, six months as scout and spy under Captain James Gregory at the

blockhouse at Clarksburg; in 1781, under Captain John P. Duvall at the same station; and in 1782 another six months service at Clarksburg under Captain Duvall. Soldier received pension in Harrison County in 1833, but between 1835 and 1838, continued efforts were made to bring about its suspension. This seems to have been done. On May 5, 1860, the fight was still being made for payment of pension arrearages, but it is not certain if this was successful.

SHOBER (SHOVER), JOHN
Service—Maryland—Navy Va. No. 16810 No. W. 6041

Born, Frederick Town, Maryland, August 17, 1759; died, October 3, 1836, in Berkeley County, Virginia, where he had lived since 1785. Married Susannah Bowers in Berkeley County, December 22, 1785. She was born September 15, 1768, but date of death is not given. Their children were: Ann, April 21, 1788; Catherine, August 20, 1789; John, May 22, 1791, died; Susannah, March 6, 1793; Henry, January 12, 1795; Eliza, September 28, 1796, died; John B., September 28, 1798; Elizabeth, September 8, 1800, died; George, October 11, 1802, died; Mary Ann, March 27, 1806; Adain, January 24, 1810.

Shober enlisted in 1776 and re-enlisted in 1777. His first enlistment of three months was extended because he was wounded, taken to the Reading hospital, and suffered for six months more from his injuries. Was under Captain Nicholas White in the regiment of Colonel Charles Beatty, and was stationed at Lord Stirling's post near Bascom Ridge, New Jersey. In his next service, took part in skirmish at Quibble Town. In September, when the British landed at the head of Elk Valley, marched with a company under Captain Hoff in Virginia militia under Colonel Baker Johnson and General Smallwood. In an attack in a party of forty men, he received a ball through his thigh, and had four other balls passing through his clothes without inflicting another wound except a scrap of lead which entered under a rib and remained there for years.

In 1780, enlisted as marine and served as a sailor on the Frigate *Confederacy*, of 36 guns, under Captain Harden. Became ill and was placed in hospital on island of Hispanola, returning to Philadelphia in October, 1781, from which place he returned to Frederick Town, Maryland. Soldier received pension, as did his widow. Supporting data filed by Colonel John Strother, Philip Rhure, and Dr. John Baltzall.

SHORES, THOMAS
Service—Virginia Va. No. 15312 No. S. 6083

Enlisted at Apple Pie Ridge, Frederick County, Virginia, in the spring of 1777 and in February, 1780, and served three years as private under Captain George Rice, Eleventh Virginia Regiment, Continental Establishment under Colonel Daniel Morgan. Fought at Brandywine and at Conchers Bridge.

While living in Hampshire County, Virginia, in 1819, pension was granted the soldier. At that time he had a son, Thomas, aged 39, and a daughter, Margaret, aged 30. Supporting data filed by Lander Shores,

Samuel Abernathy, and Lydia Abernathy. Pensioner was stricken from the rolls in 1822, but appears to have been reinstated in 1833.

SHRIEVES, (SHREAVES, or SHREEVES) WILLIAM

Service—Continental, Va. Va. No. 6231 No. S. 38358 and B. L. Wt. 2074

At the age of 17, enlisted in 1780 in Louden County, Virginia, and served as a private three years under Captain Beakins or Bedkin in Armand's Legion of Dragoons. He was living in Randolph County, Virginia, in 1819, when he received pension. At that time his wife appears to have been dead, and there were two children, James and Katherine. Bounty land warrant for 100 acres was also received by the soldier. His death occurred in August, 1835.

SILMAN, JOSEPH

Joseph Silman, aged 60, declared before the Harrison County, Virginia court in 1818 that during the Revolution he had served one year in Major Posey's Battalion in General Hayner's Brigade after which he was transferred to Colonel Elliott's Regiment, from which unit he received his discharge. Soldier had two children, one aged 13 and one aged 14 years.

SIMONS, ASA

Service—Conn. Mass. Va. No. 16522 N. S. 7519

Enlisted at Springfield, Massachusetts, in October, 1777, and served under Captain Granger, Adjutant Ball and Major Webb, and in Connecticut under Colonel Campfield, under General Gates, remaining in service until 1782. While living in Shenandoah County, Virginia, he received pension in 1833, which was suspended later that year but reinstated in 1835. Supporting data was submitted by Jacob Rudolph and Joseph Bond. Soldier was born in Springfield, Massachusetts in 1759 and died December 16, 1841.

SIMMON, JOHN

Service—Virginia Va. No. 7053 No. S. 7512

Born in 1755, and enlisted in Augusta, now Pendleton County, West Virginia, in 1777 or 1778. Served as a private upwards of six months under Lieutenant Given and Captains Lockridge and McCoy in Lockridge's Regiment of the Virginia Line. Received pension in Pendleton County in 1833. Supporting data filed by Robert McCoy and Eli B. Wilson.

SIMPKINS, CHARLES

Service—New Jersey Va. No. 12993 No. R. 9588

Born, Cumberland County, New Jersey, April 1, 1758; died, June 7, 1843, and is buried on the Marshall Garlow farm, Monongalia County, West Virginia. Enlisted in New Jersey in the summer of 1777 and remained in service until January 1, 1781, under Captains E. Loomis, Beasley, Davis, Daniels, Wescott, in Second Jersey Regiment, com-

manded by Colonel Hillman, Colonel Shrieve, and Lieutenant Colonel Dehart. He took part in the fighting about Mercer's Fort and was present at the execution of Major Andre, the British spy.

Soldier received pension in Monongalia County, Virginia, in 1834. His widow, Barbara, to whom he was married, January 2, 1782, apparently was receiving no pension at the time of her death, January 27, 1850. Mary Simpkins, probably a daughter, seems to have sought arrears in pension in 1858. Supporting data was filed by Richard Harrison, Jacob Cramer, Nancy Conaway, and Elizabeth Watt.

SIMS, JAMES (Sergeant)
Service—Virginia Va. No. 23916 No. S. 19464

Enlisted in Culpepper County, Virginia, and served from June, 1777, until 1780 as a sergeant under Captains John Tutt and James Tutt in the Virginia militia under Colonel Slaughter. Soldier was born in Culpepper County, Virginia, in 1755 and resided there until 1800 when he removed to Nicholas County, Virginia. He was residing there in 1834.

SIMS, JOHN
Service—Virginia Va. No. 23099 No. S. 7518

Born in Culpepper County, Virginia, February 12, 1755; resided in Augusta County, in 1769; and in Lewis County, Virginia, in 1819. He enlisted in Augusta County in June, 1777, and served two years as private under Captains Hopkins, Arbuckle and Bell in the Virginia Regiment of Colonel Dickinson under General Hand. A number of other officers were also named in his service record.

Pension was granted to the soldier in Lewis County in 1833 but after an investigation, the soldier was dropped from the rolls, March 16, 1835. Supporting data was submitted by William Bennett and Job Houghton.

SINNETT, (SINNAT, SENATE, or SENNATT), PATRICK
Service—Virginia Va. No. 16534 No. W. 8296 and B. L. Wt. 26881

Born in Ireland, March 17, 1752; emigrated to America in 1773 and soon afterward went out in a company commanded by Captain John Skidmore under the King and was at the battle of Point Pleasant against Cornstalk and his Indians; settled in Rockingham County, Virginia (now Pendleton County) until about 1815, when he removed to Wood County, Virginia. He served fourteen months in the Revolutionary Army in 1781 and 1782 as a private under Captains Rush, McCoy, Huston, Smith and Coger in the Virginia Line under Majors Rucker, Darke, Generals Washington, Wayne and Lafayette. Was in the battles of Jamestown, Hot Water, and Yorktown.

Soldier married Catherine Hefner, May 1, 1783, in Pendleton County, Virginia. The soldier received pension in Wood County, where he died December 19, 1850. His widow received pension in Ritchie County, Virginia, in 1856 at which time she was 88 years old. Bounty land grant of 160 acres was issued in 1855. Supporting data filed in this

case by Zachariah Rexrode, James Keister, Daniel Haymond, J. J. Jackson, H. L. Prentiss, Henry Rexrode, and Thomas Harris.

SKIDMORE, ANDREW

The grave of Andrew Skidmore, a soldier in the American Revolution, is in the Skidmore Cemetery, at Sutton, Braxton County.

SKIDMORE, JOHN (Captain)

Served as a captain in the battle of Point Pleasant in 1774 and was a captain of militia in 1777. James and Joseph Skidmore, early emigrants, appeared in Pendleton County, Virginia, before the French and Indian War. John Skidmore was the president of the first county court of Pendleton County in 1787, and Joseph was a member of the first grand jury.

James, John, Joseph, and Andrew were probably brothers, and likely the sons of Andrew Skidmore who emigrated from England to Norfolk, Virginia.

SKIDMORE, WILLIAM

Lived in Berkeley County and there enrolled as a private in the Revolution. He later drew a pension for his military services.

SLAVEN, JOHN

Service—Virginia Va. No. 16866 and 2554 No. S. 6110

Enlisted in Augusta County, Virginia, in 1776 as a private and served under Captain Michael Bowyer, Twelfth Virginia Regiment commanded by Colonel James Wood in General Scott's Brigade, until 1778. He was in the battles of Germantown and Brandywine. Application for pension was filed in Randolph County, Virginia, 1819, and again in Pocahontas in 1832 owing to confusion in names and pension granted in both cases. Claim was proved by evidence of Major Henry Flesher, supported by William McCoy.

SLEETH, DAVID W.

Born in Frederick County, Virginia, May 18, 1769. Resided in Monongalia County, Virginia, (now Lewis County), in May, 1777, when he enlisted as a private under Captains Booth, Jackson and Davis. He applied for pension in Lewis County, Virginia, which was granted in 1833, but upon later investigation his name was stricken from the rolls.

SLEITH, JOHN

In Lewis County, in 1846, Anna Parsons, aged 85, testified that John Sleith had gone out from Pendleton, then Augusta County, Virginia, as a substitute for a man named Mouse, and enlisted in Armand's Legion of Dragoons. He was at the surrender of Cornwallis at Yorktown, wore trooper's clothes, had a troop horse, sword and pistols. The maiden name of Anna was Flesher; she had married Sleith in

1777-78, a Baptist preacher, Joseph Redding, officiating; Sleith died in 1793 or 1794; Anna married Charles Parsons in 1796, and he died November 4, 1823.

Adam Flesher of Lewis County, a brother of Anna, supported her claim, as also did George Butcher of the same county. Andrew Flesher of Jackson County, a younger brother, testified for her. Elizabeth Flesher, wife of Andrew, testified that she knew Ann Flesher and John Sleith, a soldier in the Revolution. She was married in 1793, and her daughter, Mary, was born January 12, 1795, after Sleith was dead.

SMELL, PHILIP

Born in Bucks County, Pennsylvania, April, 1758; resided there until 1790, when he moved to Berkeley County, Virginia, and from thence to Monongalia County, in 1794. There he died, April 20, 1835. Soldier enlisted in the Revolutionary Army in the spring of 1776 and served six months in the militia under Captain Ludwick and General Washington, taking part in the battles of Brandywine and Monmouth. He also claimed twelve months service as a teamster. Soldier applied for pension in Monongalia County, which was granted in 1834. His claim was supported by Samuel Hanway.

SMITH, CHARLES

Service—Continental Va. Va. No. 23572 No. S. 15649

Born in Frederick County, Virginia, June 2, 1763. There enlisted, December, 1777, and served as a private under Lieutenants Calimese and Huskell under Captain Tunstons in the Virginia Line. Took part in the skirmish at Battle Town, Frederick County, Virginia. He was living in Jackson County, Virginia, in 1863, at which time he received a pension, which was reduced in amount the following year.

SMITH, DANIEL

Service—Penna. Va. Va. No. 16890 No. S. 18396

Born in Reading, Berks County, Pennsylvania, 1755, where he resided until the winter of 1777-78 when he removed to Winchester, Virginia, and later to Harrison County, Virginia. He enlisted as a private in Reading, Pennsylvania, and later in Frederick County, Virginia, serving in the First Pennsylvania Regiment, and the Second Virginia Regiment, under Captains Lazier, Heiskill, and Gillinan, under Major Ross, Colonel Darke and General Morgan from March 1777 until the spring of 1783. He was granted a pension in Harrison County in 1833 which was apparently suspended in 1834.

SMITH, GEORGE P.

Service—Virginia Va. No. 16891 No. S. 18595

Born in Berkeley County, Virginia, July 4, 1757, resided in Augusta County, Virginia in 1774. He enlisted May 8, 1777 and again January 10, 1778, and served two years under Captains Tate, Arbuckle, Long and Dickey in Virginia units commanded by Colonels Skillern, Dick-

inson, and General Hand. Substituted for Alfred Neal, April 11, 1779, to July 27, 1779; for James Harris, April 12 to July 18, 1781; and for George Richardson from July 28 to October 22, 1781.

Pension certificate issued to him in Lewis County, in 1833, which was dropped in 1835. Supporting data submitted by Abraham Whetsel and Jacob Wimer.

SMITH, JACOB

Service—Maryland Va. No. 16718 No. W. 7186 and B. L. Wt. 39337

Born in 1758 and died July 26, 1834. Enlisted in 1781 at Sharpsburg, Maryland, and served as a private under Captain Chaplin in Colonel Rawling's Maryland militia on guard duty at Frederick Town and Fort.

Was married to Catherine French in 1814 at Sandy Creek Glades, fifteen miles from Morgantown, Monongalia County, Virginia, by the Rev. Kidwell Smith, Baptist minister. Soldier received pension in Morgan County, Virginia, in 1833. His widow received pension in 1853 and bounty land warrant for 160 acres was issued in 1856. Supporting data was filed by John Ellenburger, Michael Pentony, Stephen Pentony, Henry Spohr, Matthias Ambrose, and Phineas Ogden.

SMITH, JAMES

Service—Virginia Va. No. 4718 No. S. 38385

Enlisted in 1776 in Augusta County, Virginia, in company of Captain David Lord in the Tenth Virginia Regiment under Colonel Stephens. Was in engagement at Stony Point. Resided in Greenbrier County, Virginia, in 1818, when he received pension certificate. Supportng data was filed by John Crookshanks.

SMITH, JAMES

Service—Penna. Dela. Va. No. 8892 No. W. 6120

Enlisted, January, 1776, as a private in the company of Captain Henry Darby in the First Regiment, Delaware Line, under Colonel Haslet in Lord Stirling's Brigade. Took part in the fighting on Long Island, Buckwheat Fields, N. Y., White Plains, Brunswick, Princeton, and Trenton. In 1777, he served three tours in the Pennsylvania militia of two months each.

The soldier was married August 22, 1773, to Flora Erskine. Soldier, aged 75, received pension in 1819 while living in Monroe County. He died November 28, 1837, and his widow, received pension in 1837 at which time she was 92 years old. A daughter Betsy is mentioned. Supporting data was submitted by John Francis and James Boyd. (A revised pension certificate may have been issued to the widow in 1839 whose death was probably December 5, 1844.

SMITH, JOHN

Service—Maryland Va. No. 16182 No. S. 6117

Born in Prince George County, Maryland, July 17, 1760; died in

Harrison County, Virginia, in 1840. Enlisted in Frederick County, Maryland, in 1776, as a private in the company of Captain Hillery in the Virginia Line Regiment commanded by Colonel Johnson. Soldier was issued pension in Harrison County, Virginia, July 16, 1833.

SMITH, JOHN
Service—Md. Va. Va. No. 23391 No. W. 6117

Enlisted in Frederick County, Maryland, and Shenandoah County, Virginia, June, July or August, 1776, and served a total of eight months until 1782, under Captain Price in the Virginia Line and Virginia Militia under Colonel Smallwood, General Washington and General Lafayette. Fought at Germantown and Yorktown. Was furloughed in the winter of 1778 with John Ritenour Valentine and Daniel Shyrock. In the spring of 1779 obtained Conrad Temple as a substitute. His father moved to Shenandoah County in 1779 or 1780, where John Smith served in the Shenandoah County militia under Captain Downey, Lieutenant S. Odell, Colonel Merryweather, Captain Noll, Lieutenant Rinker and Colonel Darke.

Was married to Susan Hawn, October 4, 1778, in Shenandoah County, Virginia, by Elder James Ireland. Soldier, aged 74, received pension in Pendleton County, Virginia, in 1834, and died there, May 4, 1839. His widow received pension in 1844, at which time she was 80 years old. Supporting evidence was submitted by William Eagle, Jeremiah Odell, A. W. Dyer, Adam Smith, Madaline Ridenour, and Jacob Smith.

SMITH, MARK
Service—Virginia Va. No. 16892 No. S. 18594

Born in Pendleton County, Virginia, in 1761, and there enlisted in Captain Robert Davis' company for three months and three weeks, and in the company of Captain Thomas Hickley, and was discharged in York County after eight or nine weeks service near the close of the Revolution. Also apparently had two years service as an Indian spy in Captain Wilson's company. Pension appears to have been issued in Lewis County, Virginia, in 1833, but later suspended. Grave of the soldier is on the Maxwell farm near the bridge crossing Stone Coal Creek near West Virginia Route 5 in Lewis County, West Virginia.

SMITH, THOMAS
Service—New Jersey Va. No. 23560 No. S. 15989

Born in Monmouth County, N. J., October 11, 1751, and was dead before November 21, 1834. He enlisted in 1775 in New Jersey under Captain William Emlee or Embley, in the Second or Fourth New Jersey Regiment, commanded by Colonel White. Other officers were Captains Pittman, Waycough, Conover, and Colonels Morgan, Ray, and Generals Wayne, Washington, Stirling and Charles Lee. He took part in the battle of Long Island and was discharged at Bergen Point, New Jersey. Pension granted in 1834 for two years service, while living in Harrison County. Supporting data submitted by Anthony Coon, Henry Boother, and Oliver Shurtcliffe.

SMITH, WILLIAM
Service—Virginia Va. No. 4102 No. S. 6121

Born December 20, 1752, and resided in Augusta County, Virginia, when he enlisted March 20, 1782, under Captain Payne. He served twelve months and nine days in the regiment of Colonel Haws, commanded by General Muhlenberg. In his pension application, he says that he enlisted at the same time and place as Dennis Callihan. Soldier received pension while living in Pendleton County, Virginia, in 1833.

SMITH, WILLIAM
Service—Maryland Va. No. 429 No. S. 38376

Enlisted, Frederick County, Maryland, in 1776, then re-enlisted in the spring of 1778 under Captain Roxberry of the First Maryland Regiment, commanded by General Smallwood. Served until 1780 and took part in the campaigns on Long Island, White Plains and Camden. Was discharged at Saulsbury, South Carolina. Soldier lived in Berkeley County, Virginia in 1819, when pension certificate was issued to him. He died September 29, 1830. Supporting data filed in this case by Peter Snowden.

SNIDER, JOHN

The grave of John Snider, who served as a soldier in the Revolutionary Army, is on the Marshall Garlow farm near Fort Martin in Monongalia County, West Virginia.

SOCKMAN JOHN
Service—Penna. Va. No. 8860 No. W. 11513 and B. L. Wt. 26893

Enlisted, Philadelphia County, Pennsylvania, January 1, 1776, under Captains Church and Farmer in the Pennsylvania regiment, Continental Establishment, commanded by General Butler. Took part in the White Plains campaign, and was wounded in the battle of Cowpens.

He was married to Catherine Ichner, who was born in Wurttemberg, Germany, at Wheeling, April 9, 1821, by the Rev. John Armstrong of the Protestant Episcopal Church. He applied for pension in Muskingum County, which was granted in 1819, at which time he was 66 years old. He was transferred to Ohio County, Virginia, in 1820, where he died, December 12, 1827. His widow received pension also. Bounty land warrant for 160 acres was issued to a son, John Sockman. Supporting data was filed by George Dulty, William Holliday, Theodore Kraft, and William Erving.

SODOWSKY, JAMES

Born in 1748 in Hardy County, Virginia, and died in 1831 in Bourbon County, Kentucky. He served as private in 1779 in an expedition against the Indians in Kentucky. He married Mary Ball Brown. Their son, Jacob, who was born in 1790 and died in 1866, married Mourning Bowles.

Book Reviews

THE LIFE OF JONATHAN M. BENNETT: A STUDY OF THE VIRGINIAS IN TRANSITION. By *Harvey Mitchell Rice.* (Chapel Hill: University of North Carolina Press. 1943. Pp. xii, 300. $3.50.)

Jonathan M. Bennett was not a national figure, but he lived during that time when vast changes were taking place in both the political and economic life of Civil War Virginia, and the twenty years, the transition years, following that war when West Virginia was struggling for a foothold politically and industrially. His influence was local, and at the very most, sectional; but no man was more active in the causes he chose to sponsor.

Born on the West Fork at a place called Collins Settlement in what is now Lewis County, the twelfth child of remarkable pioneering Virginians who had sought their fortunes in the western lands, his first real contact with the town that was ever afterwards to claim him as her own, was the day he traveled into Weston to attend the school of one Matthew Holt. For fifty-three years this town and Bennett were to work for the mutual good of each other. Be became deputy sheriff of Lewis County in 1836, but later, after a period as deputy in the office of the law clerk of the Lewis County Superior Court of Law and Chancery, he decided to practice law, and educated himself accordingly, passing the bar examinations with ease in 1843, and almost immediately forming a partnership with Gideon D. Camden, prominent attorney of Clarksburg. His future secured, he next set about buying up huge tracts of delinquent lands, and together with Camden, soon owned thousands of acres west of the Alleghenies. Now rich, influential, and a lawyer of prominence, he married an accomplished daughter of George Jackson, and brought her to live in his weatherboarded house on Center Street—most of the houses in Weston at this time were of logs. The home became one of the chief social centers of the little community, which furthered both Jonathan's influence and prosperity.

Happily married he took an increasingly active part in Weston's development. Especially interested in the development of the rich farm lands, he was instrumental in building turnpikes which made Weston the chief artery of trade, travel and commerce for a period of thirty years. The turnpikes secured he set about to secure newspaper service for the area encompassed and on June 19, 1846, the maiden issue of The Weston *Sentinel*, Lewis County's first newspaper, appeared. Election to the Virginia House of Delegates did not prevent him from taking an active part in obtaining a railroad for his town, the Baltimore and Ohio coming to Weston in 1856. As member of the Legislature Bennett secured a branch bank for his home town, obtained liberal appropriations for Weston turnpikes, and improved the town's government—it now had a mayor and was incorporated. Of course, Bennett was that mayor, and

with all the duties imposed by his increasing political activities, his law practice and his lands were considerably neglected. Realizing this Bennett withdrew from the Legislature but retained the office of mayor. Later, however, he ran for Lieutenant Governor but was defeated. The defeat did not dampen his ardor in things political as we next find him a member of the Virginia Democratic executive committee.

A telegram from Governor Wise, however, on July 21, 1857, changed the whole course of Bennett's life. Wise offered him the position of state auditor which he accepted. This necessitated his living in Richmond during the Civil War which followed closely on the heels of the appointment. It was while auditor that Bennett showed the strength of his personality and abilities to handle dwindling finances. That Virginia came out of the war in relatively good financial condition is due solely to the sagacity of its auditor who became, upon necessity, a virtual business manager of the state. Nor did he neglect Weston during this time of great activity. It was due to his efforts that the asylum was located there.

Bennett remained true to the South in the time of her greatest need, but he was too sane a man, too much of the mathematician to hold grudges after the conflict was over. He knew that his best interests remained in Weston; consequently, he returned to western Virginia, took the oath of allegiance to the United States, and obtained a full pardon. He was permitted to practice law without restrictions, only in the Federal Court, however; and so once more he turned his attention to his lands, many of which had been confiscated and sold. He successfully planted immigrants on his land, a dream of long standing, but only now realized.

Bennett's good sense in accepting defeat and working calmly toward better conditions for himself and others bore fruit. The Democrats sent him to the State Senate in 1872 where his work on the Virginia debt dispute made him the "big man in the legislature." He also took up the cudgels to keep the state capital in Wheeling, and succeeded in 1875 in having it removed from Charleston to that city. He was not reelected to the Senate and he never sought public office again, but his interest in politics never waned. He showed a strong interest in all transportation questions, the "greenback movement" in the late 1870's, and was mentioned for governor in 1880. Nothing came of it, however, and Bennett gave more and more of his time to his vast real estate holdings, and to his family. The death of his wife in 1886 was a great blow to Bennett whose love of home and family was unusually strong. Particularly proud of his children, he was able to say of them in his will when he invoked the blessings of God upon them that they were "entitled to such blessings by reason of their faithful devotion to their parents, and their honorable fidelity to the high purposes of life."

He died October 28, 1887, the span of his life paralleling an important period in the history of the Virginias. He left his mark on every worthy movement of that time. He lent his great ability and his tireless energy to varying causes that tended toward his state's future greatness. During his lifetime he saw an agricultural community develop industrially;

he saw the railroad take the place of the old turnpike; wherever he went the banner of progress followed. He probably did as much to further the social, political and economic development of West Virginia as any other man in public life at that time, and we owe the author, Dr. Harvey M. Rice, member of the History Department of the Ohio State University at the time the book was written, a debt of gratitude for his fine study of the Virginias in the throes of transition.

CHLOE G. CROUSE

Beckley, West Virginia

GEORGE FITZHUGH. By *Harvey Wish.* (Baton Rouge: Louisiana State University Press. 1943. Pp. 360. $3.00.)

George Fitzhugh of Tidewater, Virginia had quite a family history; in fact, "Few family names were as suggestive of ancient renown as that of the Fitzhughs of Virginia whose genealogies fill countless pages of research. . . ." The family's story in America begins in 1671 when William Fitzhugh of Bedfordshire, lawyer, planter, and statesman, emigrated to Virginia and settled on the Potomac. The Fitzhughs multiplied rapidly, but retained their high social standing among the landed gentry in spite of the fact that later generations of them had little wealth and were self educated as was the subject of this biography, George Fitzhugh, of Port Royal, by virtue of having married one of the belles of Port Royal, one Mary Metcalf Brockenbrough who lived in the quite decayed mansion of the Brockenbroughs. Here George came to dwell also, and he never quite got over the mellow beauty of the place nor ceased to brag of the gentry who made up her citizenry—old Virginia families who were far more entertaining than the practice of the law. Fitzhugh lived in fear and dread that some "obtrusive bore of a client" would disturb the quiet serenity of his life. Naturally, he made little money at his practice; and even more naturally, being a man of some intelligence and ability, he needs must have some outlet for his thoughts and emotions. He traveled but rarely outside of his native Tidewater which accounts for his hide-bound conservatism and his small, very small, knowledge of the world, its people, and problems.

He thought, however, he knew all there was to know. Hadn't he become versed in all the ancient philosophies? Hadn't he read the classics? Didn't he subscribe to and read the best of the British journals which brought all unknowing to him the "European intellectual maelstrom or revolution and reaction to his door?" When he one day confessed, "All these things which I thought original with me, I find in Aristotle," he placed the right evaluation on himself and his work, for his thinking and his writings were both borrowed from the reactionary philosophies of Europe and have no place in the democratic way of life.

At the most, we can say that George Fitzhugh was consistent. He rose to prominence in the South in his repeated denouncements of the abolitionist attacks upon the Old South. Reading extensively of both ancient and contemporary reactionary writers, he became so imbued with

their philosophies as to advocate a new conception of Democracy based on that of the ancient Greeks, and which was to rest upon perpetual slavery. The greater part of his life was to be devoted to counter-propagandism against free society and so zealous was his campaign in defense of negro slavery that the great champion of freedom, William Lloyd Garrison, spoke contemptuously of him as the "Don Quixote of Slavedom." Fitzhugh, nothing daunted, would answer, "Slavery, white or black, is right and necessary," and then try to prove his statements by contrasting the happy-go-lucky slave of the South with the poor working classes of England and of the North. These were the real slaves, he asserted, thereby proving more nor less than his own ignorance of the economic conditions existing north of the Mason-Dixon line.

The 1850's brought forth many proslavery militants, but it was Fitzhugh's vituperative pen that attracted the attention of the Northern politician and economist as well as that of the strict abolitionist. Declaring that "We have, however, almost all human and divine authority on our side of the argument," and "It is our daily boast, and experience verifies it, that the Anglo-Saxons of America are the only people in the world fitted for freedom," that out of their very superiority arose the necessity of the master-slave relationship to protect the Negro and other inferior peoples from extermination, he launched into a program of nationalism for the Southland in a series of countless fiery articles that would do justice to the ideology of Hitler's National Socialism of today.

Beginning as a pamphleteer, sending out unsigned pamphlets like *Slavery Justified* in which he stated he loved liberty but could not understand the "cold, shivering, naked, houseless, starving liberty of the prodigal son and the free negro," he broadened his scope and presented to all who would read, his magnum opus, *Sociology for the South.* He gets credit for coining the word sociology and for his defense of education. "As ours is a government of the people, no where is education so necessary," he wrote—but his arguments against free trade and for States Rights show his small grasp of the world beyond his beloved South. He won the South completely in his attack on Jeffersonianism, attacking the Declaration of Independence with such heat and passion as to make one wonder if he really preached what he actually thought; for Fitzhugh's oft repeated doctrine of human rights was that "some were born with saddles on their backs, and others booted and spurred to ride them,—and the riding does them good." He laughed at the "Pursuit of Happiness" clause, saying the great object of government was to "restrict, control, and punish man in the 'pursuit of happiness.'"

Sociology for the South was hailed as a great piece of work by leading Southern journalists, and the author in his ignorance and egotism found the time for another volume *Cannibals All* which set forth the same ideas of slavery and southern nationalism, Fitzhugh saying its object "has been to show, that Labor makes values, and Wit exploitates and accumulates them; and hence to deduce the conclusion that the unrestricted exploitation of so-called free society, is more oppressive to the laborer than domestic slavery." But this book went farther than the first volume of sociology in its criticism of the alleged sinister moneyed

interest in government, and "in its emphasis on the ethical weaknesses of the capitalistic spirit." So militant were Fitzhugh's arguments that the English author Mackay mocked him by saying, "But Mr. Fitz Hugh is a slave already—a slave to his theory."

Later when Fitzhugh became literary editor of De Bow's journal, he voiced the doctrine of the present day Fascist and Nazi: "The great problem of European revolutionists is how to provide for the unenslaved masses by enslaving them again; what new chains to impose in order to secure the well-being of the people." George Fitzhugh did more to fan the flames of secession than he realized. He believed in the Union, and thought that the interests of the State and the Union could be reconciled, but like Lincoln's statement that the Union could not exist half slave and half free was the one made by him at an earlier date: "Two opposing and conflicting forms of society cannot, among civilized men, coexist and endure. The one must give way . . . the other become universal." This is what he believed, and this is what he taught. It was only after the war that a somewhat chastened Fitzhugh solved for himself the riddle of the house divided. Fitzhugh understanding from his wider experiences the co-operative role that the New South was to play in a unified American nation wrote: "When the various railroads now constructing or which are contemplated, are finished through this great belt of country, they will by the trade and travel which they accommodate vitally interest three-fourths of our America in the continuance of the Union. . . . Community of interests and like social and industrial systems will bind us together in the future."

Harvey Wish in this volume has brought to our attention facts seldom emphasized in our history books: that the pen is mightier than the sword, that the winged words written centuries ago may wield a power of such force as to revolutionize society. Had Fitzhugh read less of the ancients and observed more of life he might have turned his writings to a worthier purpose.

CHLOE G. CROUSE

Beckley, West Virginia

State History as Featured by the Press

MAGAZINES:

American Historical Review (July, 1945), *The Baltimore Convention of 1912*, by Arthur S. Link; *A Letter from One of Wilson's Managers*, by Arthur S. Link; *The Origin of Seward's Plan to Purchase the Danish West Indies*, by Halvdan Koht.

Virginia Magazine of History and Biography (April, 1945), *John Washington Settles in Virginia*, by Beverley Fleet; *Comments on Virginia's Contribution to American Civilization*, by Thomas Perkins Abernethy. (July, 1945), *A Survey of Stratford County Records*, by George H. S. King; *The Muse (Mewes) Family of the Northern Neck of Virginia*, by Mary N. West.

National Historical Magazine (June, 1945), *Treasures of Our Museum-Accessories of a Gentlewoman*, by Rosalind Wright, director.

Museum Echoes (June, 1945), *A Pageant of Iron and Steel; River Museum Expansion.* (August, 1945), *Girl Home-Makers in West Virginia*, by Eleanor M. Sweeney; *Revolutionary Soldiers of Upper South Carolina*, by Katie-Prince Ward Esker.

South Atlantic Quarterly (July, 1945), *Congress Versus the President in 1944*, by Floyd M. Riddick.

Pennsylvania Magazine of History and Biography (July, 1945), *History, the Key to the Magic Door*, by George Fort Milton; *The Library*, by Captain John Blackwell.

The Virginia Quarterly Review (Summer, 1945), *Roosevelt in Retrospect*, by Walter Millis.

Michigan History (June, 1945), *Notes Concerning the National Archives; Notes Concerning the Franklin D. Roosevelt Library in Hyde Park.*

West Virginia Review (June, 1945), *West Virginia Ancestry of Lieutenant General George S. Patton; Wells Goodykoontz Leaves Collection Valued at $50,000. to Concord State College, Athens.* (August, 1945), *West Virginians in the Pacific Theatre*, by Boyd B. Stutler; *The Grave Creek Mound*, by Delf Norona.

NEWSPAPERS:

THE PARKERSBURG NEWS, *July Fourth Celebration Marks Freeing of Pt. Pleasant Bridge*, July 6.

THE FAIRMONT TIMES, *Historian Horn Writes of Tygart Valley*, to be published with "*Horn Papers*," July 23; *Last Raid on the Cherokee Indians at Valley Falls*, August 13; (these sketches appear in column DO YOU REMEMBER, by E. E. Meredith.)

THE STATE SENTINEL (Fayetteville), *Ennis School To Be Restored—First Rural Free School Built West of Alleghenies*, August 15.

JEFFERSONIAN REPUBLICAN (Ranson), *Alderson-Broaddus College a Growing Institution: Broaddus College Began Existence as an Academy in 1871*, by G. A. Compton; *Mason School of Music and Fine Arts, Founded by Dr. William S. Mason in 1906*, August 10.

THE INDUSTRIAL NEWS (Iaeger), *Justice Methodist Church Observes Anniversary—Cornerstone Laid in 1812*, September 20.

PHILIPPI REPUBLICAN, *First Love Feast and Church in Barbour County*, August 16.

Contributors

MILTON GEROFSKY, for biographical sketch see Volume VI, page 405.

EMMA FRANCES ALDERSON, the daughter of Joseph Andrew and Annie Laura (Peck) Alderson was born at Summersville, West Virginia, where she attended the local schools. In 1923, she received her Standard Normal diploma from Marshall College; in 1926, a Bachelor of Arts degree from West Virginia University; and in 1943, a Master of Arts degree from the same institution. She spent many hours in searching private papers in the home of Emma Cornelia Alderson, a distant cousin, to obtain material for her thesis, "Alderson Baptist Academy and Junior College and Its Founders," the first history to be written of that institution. In 1935, she spent five weeks in England, one in Paris, France, and two days in Dublin, Ireland. The next year she drove with friends to the Pacific Coast. In 1941, she studied for six weeks at the University of Mexico, Mexico City, Mexico. At present she is a teacher of Social Studies at Charleston High School, Charleston.

CHLOE G. CROUSE, for biographical sketch see Volume II, page 322.

Historical News

WEST VIRGINIA HISTORICAL SOCIETY

The West Virginia Historical Society will hold its annual meeting at the Daniel Boone Hotel, Charleston, on Saturday, November 10. The program for the one-day session is now being planned, and when completed will be announced in a circular letter to members of the Society and to others who are interested in West Virginia history. Already three speakers have accepted invitations: Dr. Harlow Lindley, executive secretary of the Ohio State Archaeological and Historical Society, who will discuss the topic, "The Organization and Work of the Local Historical Society," Dr. Lewis Chrisman, of West Virginia Wesleyan College, Buckhannon, West Virginia, who will discuss "Place Names in West Virginia," and Mr. Howard Chernoff, manager of the West Virginia network, who will be guest speaker at the luncheon.

Treaty of Greene Ville Sesquicentennial

The Rev. L. J. Priestly, president of the West Virginia Historical Society, was the Society's official representative at the 150th Anniversary Commemoration of the signing of the Treaty of Greene Ville held at Greenville, Ohio, July 29th to August 3rd.